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A Cultural Resource Management Strategy For The Custer National Forest

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ABSTRACT

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Title: A CRM Strategy for Custer National Forest

Abstract: The Forest contains a very high concentration of cultural sites, particularly prehistoric campsites. Over 2500 varied archeological and historic sites have been recorded, and new sites are being discovered at a rapid pace. A high site density and the variety and extent of ground modifying undertakings occurring on the Forest have resulted in some damage to cultural sites and in costly delays and constraints on other resource programs.

To this point the Forest Cultural Resource Management (CRM) program has been reactive in nature. Compliance with most requirements of various Historic Preservation laws on a project-by-project basis has been the central feature of the CRM program. Little time or resources have been available for comprehensive planning, for enhancement and protection efforts, or for interpretive activities. Formal site evaluation and nomination efforts have been postponed.

This project establishes a comprehensive strategy for Cultural Resource Management on the Forest. It is derived from methods developed by the Park Service and the Advisory Council on Historic Preservation, from our existing knowledge of the Forest, and from experience in other Regions. It will correct the deficiencies in the current program, will satisfy all requirements of procedural agreements with the various SHPOs, and will result in significant improvement in management of a fragile and finite resource.

EXECUTIVE SUMMARY

Title: CRM Strategy for Custer National Forest

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Summary: The purpose of the project is to develop a comprehensive strategy for Cultural Resource Management (CRM) on the Custer National Forest. The CRM Strategy is broadly analogous to the Historic Preservation planning efforts now under way in many States and Federal Agencies, but is specifically scaled to resources and management needs of an individual National Forest. Primary objectives of the CRM Strategy include: 1) to preserve and enhance significant cultural values on the Forest, 2) to meet legal compliance and policy requirements, 3) to improve the integration of Cultural Resource Management with other Forest resource management programs, 4) to provide a structure for scheduled implementation of broad direction in the Forest Management Plan, and 5) to adapt regulatory requirements for identification, evaluation, and treatment of cultural sites to specific resource types and management needs of the Forest.

The project is based upon an analysis of the current management situation for

Cultural Resources on the Forest and in the Region. The recommendations of the Regional Task Force on Cultural Resource Management (Appendix D) are incorporated. A comparative analysis of two major contemporary approaches to comprehensive historic preservation planning is conducted, and alternatives are developed. A review of the literature and numerous discussions with representatives of other Federal and State agencies, professional societies, academics, and avocational groups were employed to help assess the relative merits of the different alternatives. Costs and benefits of adapting one of the current methodologies to the needs of the Forest are briefly considered.

Deficiencies are noted in the current CRM Program with regard to the balance between active management activities (planning, data base improvement, interpretation, enhancement), and compliance-driven surveys, analyses, record keeping and administrative coordination efforts. Formal evaluation of discovered sites and nomination to the National Register of Historic Places have been postponed to the point where a backlog of thousands of unevaluated sites now exists. Site stabilization, protection, and interpretation activities have not been emphasized.

Key elements of the proposed CRM Strategy include: 1) systematic, In-Service inventory work, 2) use of an endemic evaluation system, 3) predictive model development and use, 4) use of multiple property contextual National Register nominations, and 5) use of an explicit allocation system to aggregate individual sites into broad management classes.

The "Preservation Planning in Context" system developed in draft form by T.F. King (1985) of the Advisory Council on Historic Preservation was selected as the most appropriate framework for achieving the objectives of this study. A comprehensive Cultural Resource Management Strategy was developed using King's approach in conjunction with a modification of a resource allocation scheme devised in the Southwestern Region (Green and Plog 1983, Spoerl and Tainter 1983). A five year implementation schedule, assessment of preliminary budget needs, and a discussion of projected effects are presented.

The proposed program can be phased-in incrementally as funding, personnel, and other priorities permit. Full implementation will increase the cost of the CRM program by about 20% over the current program. These costs will be outweighed by significant improvements in CRM support services to other resources, by an improved compliance posture, and by substantial improvement in the management of Cultural Resources on the Forest. At the end of the first implementation period (1993) the Forest will be able to demonstrate that the finite and unique historic resources placed in our stewardship have been managed wisely in terms of cost effectiveness, efficiency, and with sensitivity for the needs of future generations of Americans.

It is recommended that the Cultural Resource Management Strategy developed here be reviewed by the three affected State Historic Preservation Officers and by the Advisory Council on Historic Preservation. Upon approval by the Forest Supervisor it should be implemented for a five-year trial period beginning in Fiscal Year 1988.

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I. Issues, Concerns, Opportunities

The purpose of this document is to develop a comprehensive Cultural Resource Management (CRM) Strategy for the Custer National Forest. The CRM Strategy is intended to provide a balanced framework for the identification, evaluation, preservation, and treatment of archeological and historic sites. It establishes clear goals and objectives for a five year period, contains an implementation schedule, and provides an objective method of monitoring the progress of the program. The CRM Strategy is similar to the Historic Preservation Planning process now under development in many States and Federal agencies. It adapts preservation planning and compliance systems designed for application on a National scale to the specific resources and management needs of an individual National Forest.

The Custer National Forest contains one of the most varied and complete assemblages of cultural resources in the Northern Great Plains. This is due to several factors, including great environmental diversity in the three-state area spanned by the Forest, excellent natural site preservation factors, sparse contemporary populations, and the complexity of the many Plains Indian cultures which occupied the area for thousands of years.

Over 2500 cultural sites are now known on the Forest. These range from a rock overhang occupied as early as 14,000 years ago by some of the first migrants to the Northern Great Plains, through the elaborate Plains Indian cultures of the Fur Trading and Indian Wars periods, to settlement of the region by miners, soldiers, ranchers, and farmers in the historic period. Archeological sites predominate because of land ownership patterns and past management practices which removed many historic sites after the Dust Bowl period.

The current CRM effort on the Forest is narrowly focused on the identification of cultural sites which may be adversely affected by management activities generated in other resource program areas. Avoidance or mitigation of impacts to cultural sites is usually possible, and compliance with the major features of Historic Preservation laws is accomplished. Specialized procedural agreements have been developed with the State Historic Preservation Officers in Montana, North Dakota, and South Dakota which greatly streamline the CRM compliance process. Many significant cultural sites have been preserved or extensively studied. Time delays and other constraints due to the presence of cultural sites on the Forest have been minimized. Despite its effectiveness in pragmatic project support, the current Forest CRM Program has several deficiencies.

Chief among these is the reactive nature of the CRM Program. The major thrust is project-specific inventories related to planned activities in the Range, Timber, Minerals, Engineering, or Lands programs. Most of the energy and resources of the present program are devoted to staying one step ahead of some sort of ground disturbing activity or land adjustment action. Record keeping, analysis, report preparation, Antiquity Permit administration, and coordination with regulatory bodies concerned with such projects are the remaining emphases in the current program.

Little emphasis is currently placed on Historic Preservation Planning, on formal site evaluation, on formal nomination of significant sites to the National Register of Historic Places, or on problem-oriented inventory, sampling, or modeling. A substantial backlog of unevaluated, poorly understood archeological and historic sites has accumulated and compliance with some aspects of Historic Preservation laws is poor. This places the Forest in awkward management position and creates a growing potential management constraint in the form of thousands of unevaluated cultural sites which must be preserved in-place or avoided by subsequent resource developments.

Because no ground disturbing project activities have occurred in them to stimulate cultural resource inventory and evaluation work, large areas of the Forest are poorly understood in terms of Cultural Resources. Areas such as the 335,000 acre Absaroka-Beartooth Wilderness, the extensive Slim Buttes unit of the Sioux Ranger District, or the expansive prairie areas of the Grand River Ranger District lack sufficient information for reasoned cultural resource recommendations or decisions to be made. Past efforts at problem-oriented inventory and analysis, while useful, have been erratic and opportunistic. The lack of a coherent plan or strategy for Forest-wide CRM efforts beyond project-by-project compliance has resulted in some inefficiencies and lack of program balance.

Concerns have been raised from within the Forest, from within the Northern Region, and from various segments of the public regarding the balance and direction of Forest Service CRM efforts. Organizations concerned with Historic Preservation, such as the State Historic Preservation Officers and the Advisory Council on Historic Preservation have urged the Forest Service to improve its Cultural Resource Management efforts through more balanced planning at all levels of administration.

An opportunity exists then to significantly improve the quality and effectiveness of Cultural Resource Management on the Forest. Development and implementation of a CRM Strategy adapted from current Historic Preservation planning methods, from a good understanding of the unique historic contexts of the Forest, and from resource allocation experience in the Southwestern Region has this potential.

II. Goals and Objectives

A. Goal

The goal of this project is the development of a comprehensive Cultural Resource Management Strategy which will:

1. preserve and enhance the unique Cultural Resource values of the Forest for the enjoyment of present and future generations,

2. improve CRM Program compliance, balance, and effectiveness, and

3. provide an implementation schedule for the broad direction identified in the new Forest Land Management Plan (USDA 1987).

B. Objectives

Specific objectives which will be achieved through implementation of such a comprehensive approach to CRM on the Custer National Forest include:

1. meet the requirements of the National Forest Management Act, the National Historic Preservation Act, the Archaeological Resources Protection Act, and the American Indian Religious Freedom Act.

2. improvement of CRM Program integration with other resource management programs on the Forest (e.g. Range, Timber, Minerals).

3. improvement of CRM Program continuity and stability in the face of changing personnel and budgetary constraints.

4. improvement of CRM Program focus and balance with regard to,
   a. "out front" problem-oriented inventory and evaluation,
   b. better compliance tracking and coordination,
   c. enhancement, stabilization, and protection efforts.

5. adapt Historic Preservation requirements to specific Forest conditions and management needs, including:
   a. the preponderance of prehistoric sites and remains,
   b. the existence of many poorly understood Forest units,
   c. the needs of three distinct SHPO organizations,
   d. the tremendous resource variability on the Forest,

Periodic monitoring of the rate and degree of the accomplishment of these objectives should provide an accurate measure of the effectiveness of the CRM Strategy and its implementation Forest-wide. Annual reviews of the program and input from such outside sources as the SHPOs, the academic community, and the public should highlight necessary changes. Analysis of such input and consideration of newly discovered information will permit the CRM Program to evolve and improve over the five year period proposed for the life of the initial strategy.

III. Planning Framework and Criteria

As with most resource management programs, Cultural Resource planning and administration must articulate with an established legal framework. Both formal and informal evaluation criteria exist, against which any CRM Program can be judged. Further constraints on CRM planning and administration exist in the form of realistic budgetary and personnel ceilings which must be taken into account. This section will briefly summarize the major regulatory and policy criteria which affect this project. Less formal guidance for CRM Program planning and administration is also addressed.

A. Pertinent Legislation and Regulations

The regulatory framework of several Federal laws establishes the primary set of formal evaluation criteria affecting CRM on the Forest. This is augmented by State law in some cases and by various guidelines and handbooks. The major requirements of the Federal laws considered crucial to this project include:

1. Federal Laws

a. National Forest Management Act {90 Stat 2949}

The Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976 (NFMA) requires that an interdisciplinary approach to land management and planning be employed on the National Forests and Grasslands. Provisions for updated planning and public involvement are included.

With specific regard to Cultural Resources, the NFMA requires that Forest planning shall provide for the identification, protection, interpretation, and management of significant cultural resources. NFMA states that Forest planning shall meet these six major requirements:

(1) provide an overview of known historical, archeological, and anthropological data.

(2) identify areas needing further study and intensive inventory.

(3) provide for evaluation and nomination of significant cultural sites to the National Register of Historic Places.

(4) provide protection measures for significant cultural sites.

(5) identify maintenance needs for significant cultural sites.

(6) identify public interpretation opportunities.

A recent review of Forest Management Plans in Region 1 by the Chief's Office found that most of the new Forest Plans are weak in meeting the CRM provisions of NFMA. The CRM Strategy developed here will address all NFMA stipulations for cultural resources.

b. National Historic Preservation Act {16 USC 470}

The National Historic Preservation Act of 1966 (NHPA) requires the head of any Federal agency with jurisdiction over a Federal, Federally assisted, or Federally licensed undertaking to take into account the effects of its actions on significant cultural resources. NHPA also requires that Federal agencies afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on its undertakings. These responsibilities are delegated to the Regional Forester administrative level in the Forest Service.

To this point, the primary emphasis of the Custer CRM Program has been compliance with the major features of the NHPA regulations (36CFR800). Figure 1 is an idealized flow chart of the sometimes complex consultation and coordination requirements of NHPA. Costly project delays, frustration, and occasionally serious litigation can result from the lack of effective attention to the NHPA review and compliance process (See Figure 1 and Appendix C).

Critical links in this process are the State Historic Preservation Officers (SHPOs) who must be adequately involved in virtually all Forest Service project activities. The Custer National Forest has developed a series of specialized procedural agreements to streamline the mandatory review and compliance process in Montana and the Dakotas (see Appendix D). Despite the effectiveness of these agreements in facilitating basic field project support, the Forest is not in compliance with all requirements of NHPA. The CRM Strategy developed here will provide the means to address all aspects of NHPA compliance.

c. Archaeological Resources Protection Act {93 Stat 721}

The Archaeological Resources Protection Act of 1979 (ARPA) provides Federal agencies with broad direction and powers for the management of prehistoric resources. The Forest Service has developed uniform regulations (36CFR296) to implement the requirements of ARPA on National Forest System lands. Primary components of ARPA include:

(1) a definition of "archaeological resources" on public land.
(2) provision for contact with appropriate Native American groups.
(3) establishment of a detailed artiquities permit system.
(4) establishment of professional standards for researchers on NFS land.
(5) establishment of criminal penalties for destruction of sites.
(6) provision for proper curation of Federal cultural remains.
(7) provisions for improved communication of research results.

The current Custer CRM Program is in compliance with the major requirements of ARPA. The CRM Strategy developed here will be compatible with all aspects of ARPA and will significantly improve coordination with Native American tribal groups affected by Forest activities.

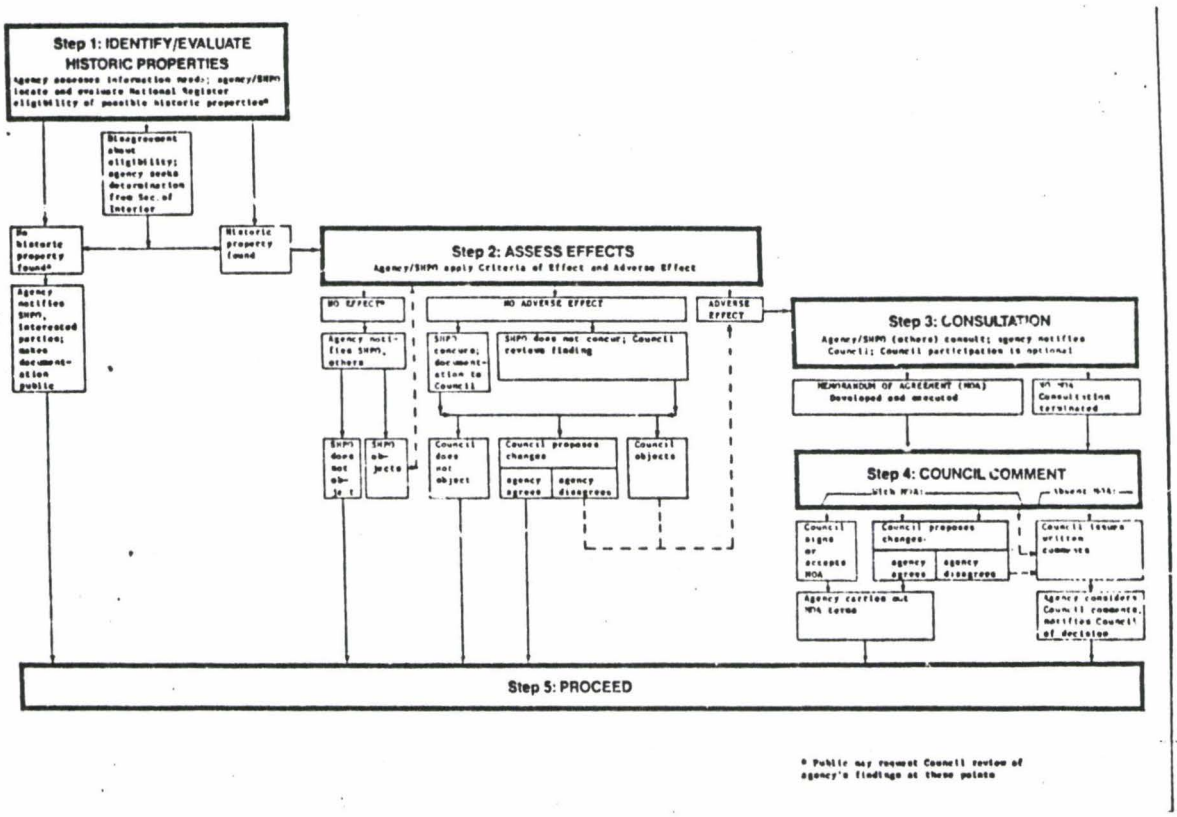


Figure 1: Idealized Folow Chart of 36CFR800 Review and Compliance Process (After ACHP 1986:16).

d. The American Indian Religious Freedom Act {42 USC 1996}

The American Indian Religious Freedom Act of 1978 (AIRFA) establishes a Federal policy for the protection and preservation of traditional Native American religious sites. Recognizing that numerous traditional religious or sacred areas important to the practice of Native American religions are located on Federal lands, AIRFA directs Federal land managers to assess the effects of their activities upon such sites or areas and to take reasonable steps to accommodate traditional religious uses.

While AIRFA stops short of mandating exlusive use or access to any single user group, it does specify a consultation process with tribal entities and individual religious practictioners. The Forest is known to contain sacred or ceremonial areas and sites important to several different tribal groups. The Forest Land Management Plan created a special management unit for such purposes for the Hidatsa on the McKenzie Ranger District and other sensitive areas are known or suspected to exist on several Districts. The CRM Strategy developed here is compatible with the planning and consultation requirements of AIRFA and will improve communication with Native American groups.

2. Less Formal Evaluation Criteria

Other less formal criteria affect the course of CRM planning and administration on the Forest. These include Forest Service Manual and Handbook materials, guidelines established by other Federal or State agencies, and public expectations expressed as input from professional and avocational groups or individuals. A short list of key guidance which was reviewed and utilized in the development of the CRM Strategy includes:

a. Forest Service Manual {2360}, original and revised draft. (1986).
b. Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (1983).
c. Advisory Council on Historic Preservation, "Treatment of Archaeological Properties: A Handbook" (1980).
d. Advisory Council on Historic Preservation, "Manual of Mitigation Measures: Section 106 Update 3" (1982).
e. National Park Service, "Guidelines for Federal Agency Planning Responsibilities Under Section 110 of the National Historic Preservation Act", draft (1985)
f. State Historical Society of North Dakota, "Guidelines for Cultural Resources Inventory Projects" (1981).
g. State Historical Society of North Dakota, "Guidelines for the Recording, Evaluation, and Mitigation of Adverse Effects to Stone Circle Sites in North Dakota" (1983).
h. Report of Regional Forester's Taskforce on Cultural Resources in the Northern Region (1986).
i. Guidelines for Cultural Resource Surveys and Survey Reports in South Dakota (1987).

The CRM Strategy is consistent with the primary objectives of the guidelines listed above, but differs in some areas because of the need to adapt broad guidance to the needs and resources of a specific National Forest. Some criteria, for example the Advisory Council's "Treatment of Archeological Properties" or North Dakota's Stone Circle Guidelines , are adopted in whole because of their particular applicability to the Forest's preponderance of prehistoric archeological sites. Others, such as the Park Service's Section 110 Planning Guidelines or the Forest Service Manual, are less easy to adapt to specific management needs and resources because of their broad scope and general language.

B. Other Considerations

Expectations of the historic preservation community and the public were considered in the design of the CRM Strategy. Public input to the Forest Management Plan was reviewed. Documents such as the Society of Professional Archeologists' Code of Ethics and the draft fieldwork standards of the Professional Council for North Dakota Heritage were considered. In this instance Federal and State guidelines were more helpful in addressing land management concerns.

The findings of the Regional Forester's CRM Task Force were reviewed and incorporated into this project (See Appendix B). The CRM Strategy will address the imbalance noted in many Region 1 CRM Programs and is compatible with the objectives of the taskforce. Budgetary estimates prepared by the Forest for the taskforce analysis are considered accurate and delineate the fiscal conditions which affect this project.

Sufficient flexibility exists within the context of cultural resource administration to allow the Forest to meet the varied evaluation criteria discussed above with a realistic Forest-specific strategy. The following section discusses preservation planning and its application to Forest needs within the legal framework previously presented.

IV. Current Approaches and Data Base Needs

Historic Preservation Planning is an actively evolving field nationwide. A variety of Federal, State, and County bodies are currently preparing plans for the balanced management of historic and archeological properties under their jurisdiction. Much of this activity is coordinated with and partly funded by State Historic Preservation Offices in cooperation with the National Park Service.

The National Park Service is the Federal agency charged with distribution of historic preservation funds allocated by Congress for preservation of the National heritage. Since 1980 the Park Service has been strongly encouraging State governments and Federal agencies to move beyond eclectic, site-by-site management towards broad, regional approaches to Historic Preservation. The idea is to develop regional contexts for cultural resources, to pose relevant historical or scientific questions, to define appropriate management prescriptions or uses for cultural properties, and ultimately to ensure that the bits and pieces of the Nation's cultural heritage are afforded a "fair shake" in our rapidly developing industrial society.

The approach recommended by the Park Service to the States and to other Federal agencies is sometimes referred to as RP3, or the Resource Protection Planning Process. Initial RP3 efforts are now underway in the Dakotas and in Montana. Because of the National scale of the Park Service program, RP3 is designed tc work on very large State or multi-state land areas. The process is largely focused on defining historic contexts, evaluating cultural sites with regard to the eligibility criteria of the National Register of Historic Places, and on building broad consensus for management plans (USDI 1983, 36CFR60.4).

Several Federal agencies have initiated planning efforts directed at systematic management of cultural properties under their jurisdiction. RP3 is the accepted model approach, but has proven to be difficult to apply to specific land management issues on individual military bases, individual National Forests, or other smaller land units (King 1985). Difficulties in applying the RP3 approach on military bases on the MX missile project and on surface coal mines in the Midwest led to development of the "Preservation Planning in Context" system mentioned earlier. This approach will be reviewed more completely in the next section.

Within the Forest Service, most Historic Preservation planning efforts to date have been devoted to producing cultural resource overviews to establish the actual contexts for preservation planning. The Southwestern Region has set the pace in developing comprehensive overviews, sampling designs, and allocation systems. The Pacific Northwest Region has recently devoted considerable effort towards the development of sampling designs and inventory strategies which show great promise (Davis and Marvin 1983, Darsie and Keyser 1985). Other Forests have deferred work on detailed historic preservation plans and have instead concentrated on addressing broad cultural resource issues in the Forest Land Management Plans mandated by NFMA.

Few, if any, Forest Plans contain the level of precise direction for historic resources envisioned in RP3. In many cases this is inevitable because of the lack of budgetary resources to produce the substantial data bases and analyses required for RP3. In other cases Forests prefer to direct their efforts towards basic, case-by-case compliance with the key Historic Preservation laws.

This approach may get the individual timber sale or minerals project "cleared", but it ignores many legal requirements and contains serious inefficiencies which good planning can eliminate. Some of the problems in Cultural Resource Management now being faced by the majority of the Forests in Region 1 reflect the lack of a planned approach to Historic Preservation.

An ideal Historic Preservation Plan or CRM Strategy for a National Forest should be based on a thorough understanding of the cultural resources in the planning area. This means that a suitable amount of research has been done, Overviews or syntheses of the existing data have been developed, the attributes of cultural sites which contribute to their significance or value have been defined, and a consensus has been reached on appropriate treatment strategies or management prescriptions.

A good CRM plan should answer many of the questions often posed by District Rangers and Forest Supervisors concerned with multiple-use management. These include 1) what kind of cultural sites occur on the Forest, 2) which ones are important, 3) why are they important, 4) how do other Forest resource activities affect significant cultural sites, 5) how much inventory, evaluation, mitigation, interpretation, and preservation is enough, 6) are there areas where insufficient data exist for reasoned management of cultural sites, 7) what is the appropriate strategy for balanced management of the Forest's significant cultural sites, and 8) is the Forest in compliance with Historic Preservation laws and regulations?

The sometimes difficult question of importance or relative significance for a given cultural site can only be answered in comparison to the context of the site within the larger planning unit. For archeological sites this is often a question of potential to contain information useful in addressing relevant scientific questions. For historic sites, considerations of adaptive reuse or interpretive value come into play. In any case, the key management question of appropriate treatment should be addressed against a broader context than simple site-by-site analyses can provide.

The points to be made are that management of cultural sites on public land and concern for good Historic Preservation are compatible with multiple-use, and that they can be as rational and systematic as any other resource activity. We may not need RP3; but we need something very much like it.

It was stated earlier that one problem faced by Forests considering the development of a planned approach to cultural resource management was the lack of reliable information about cultural properties and the lack of resources to quickly generate such a data. This is not a major problem on the Custer National Forest because inventories stimulated by an "oil boom" and by past In-Service inventory programs have resulted in a flood of new cultural resource information for some areas of the Forest.

In 1979 less than 250 cultural sites were recorded Forest-wide. By 1987 more than 3500 archeological and historic sites were discovered. Numerous excavations have been conducted, dozens of radiocarbon dates have been obtained, and our understanding of cultural resource values on the Forest has improved greatly. Information to establish viable contexts for prehistoric sites is abundant (See Figure 2) on many Ranger Districts.

In 1983 prepared a comprehensive Overview of the prehistoric resources of the Forest (Beckes and Keyser 1983). The Overview is based on a thorough analysis of the relevant literature, a consideration of data from 1400 cultural sites, and constitutes an original syntheses of cultural and environmental data bearing on Historic Preservation issues. Because less than one half of one percent of the known Forest sites at the time of the analysis were historic, the Overview only addressed prehistoric resources (See Figure 3).

The Forest Overview establishes the primary contexts for management for the CRM Strategy developed in this project. It is scheduled for revision and updating in 1988. In 1985 the Bureau of Land Management produced an Overview of the archeology of Western North Dakota (Gregg and Davidson 1985). While broader in focus than the Forest Overview, the BLM document is directly applicable to issues addressed in this project and is used to augment the primary data base. Taken together the two documents provide a contextual framework which meets RP3 standards for prehistoric site management.

Historic resources will be addressed in the CRM Strategy, but will be managed more conservatively than archeological sites. This is due to the lack of any contextual document or background study for historic resources. The Forest and the local Bureau of Land Management office are studying the feasibility of a joint Historic Overview; but are several years from having one in hand. Individual theme studies on groups of historic sites such as Homesteads, early cattle ranches, or early Forest Service administrative sites will be undertaken to facilitate historic site management during the five-year planning period.

It is expected that most historic resources will be administered on an individual basis in compliance with NHPA procedures until the scheduled five year revision of the CRM Strategy. In the interim it may be possible to address certain classes of historic sites or particular historic themes with the incomplete data now at hand. One example of such a class may be the scattered, razed, farmstead sites on the Little Missouri National Grasslands unit. Virtually none of these sites have standing buildings or intact cultural features due to a government policy of homestead removal in the years following the Dust Bowl. Other types of Historic sites which may be suitable for management by standardized prescriptions include Civilian Conservation Corps structures and Forest Service administrative sites such as Tripoint Lookout or Big Park Cabin.

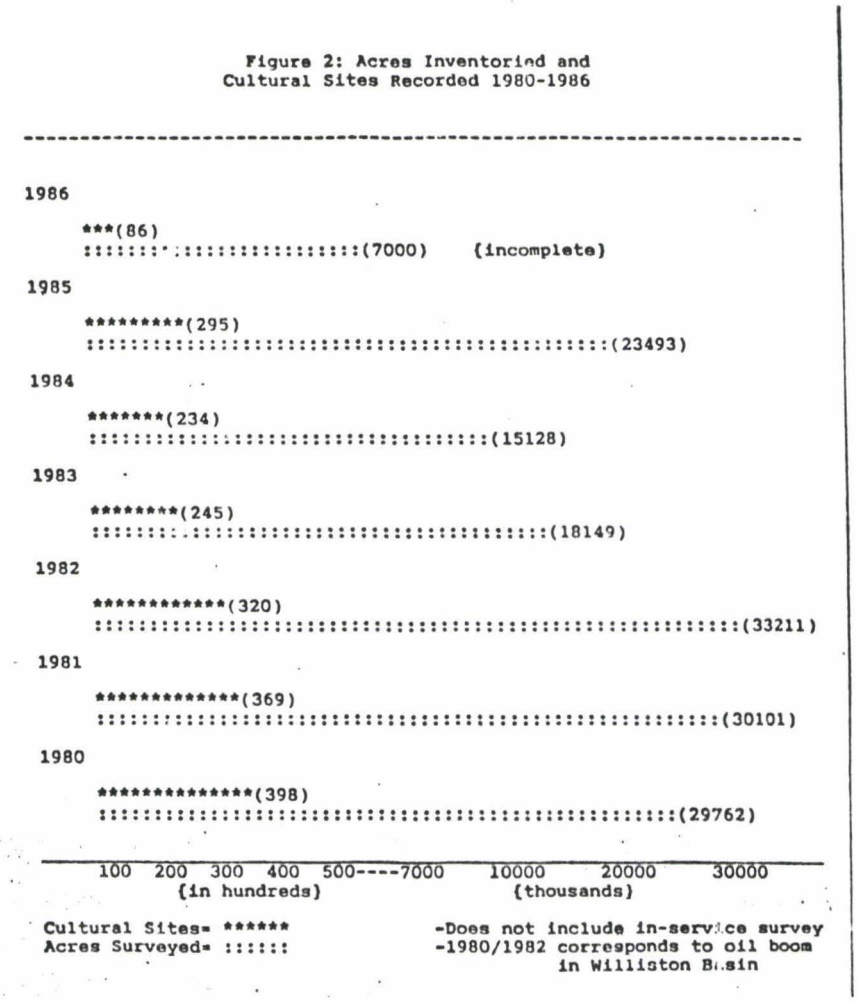


Figure 2: Sites Currently Recorded Forestwide.

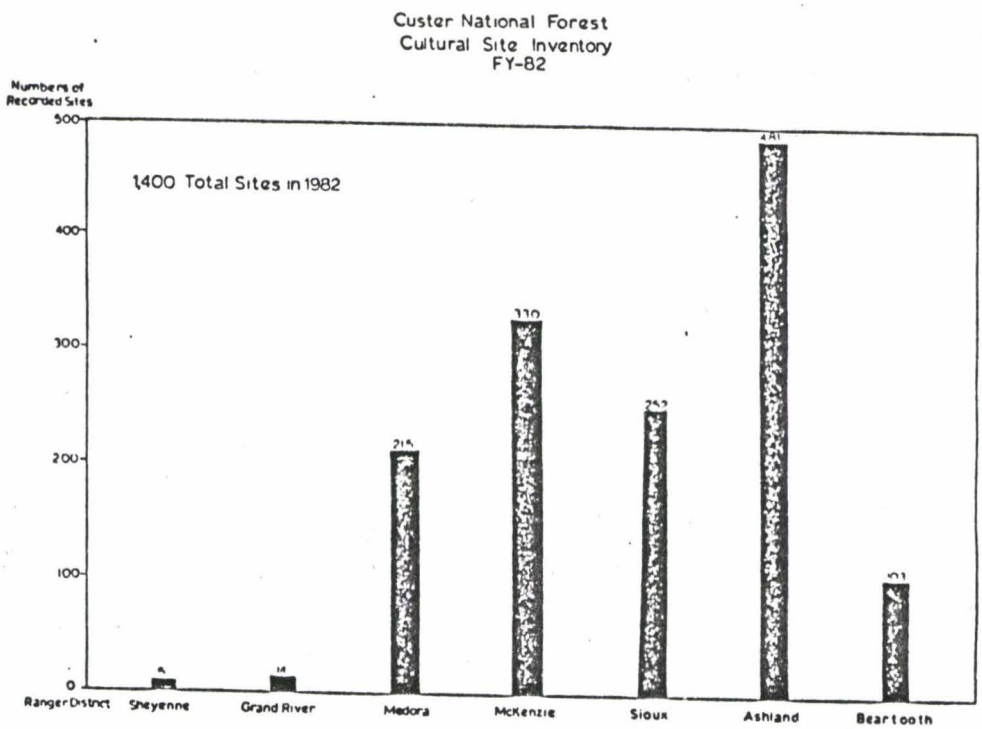


Figure 3: Distribution of known sites used in preparation of first Forest Overview (1982-83)

V. Current Management Situation

The current management situation for Cultural Resources on the Forest is that of a relatively strong program with fair acceptance and good management support. The Program has been effective in dealing with the demands of the petroleum and mining industries for rapid response and effective coordination. Good integration of CRM with other Forest resource management programs and timely support to project activities has raised the acceptance level of the Program and has facilitated multiple-use management on the Forest.

Efforts at efficient coordination with the three State Historic Preservation Officers, the development of carefully tailored procedural agreements for compliance in each State, and a good faith attempt to address State concerns has resulted in excellent relations with our primary agency reviewers and with the Advisory Council on Historic Preservation. Participation in professional and avocational society meetings and events, public presentations, and distribution of the Forest Overview have generated a fair degree of public support.

An emphasis is placed on field-oriented management in Cultural Resources and on sustained quality control efforts in the administration of Antiquities Permits for the numerous consulting firms and research entities which operate on the Forest. This has resulted in high standards of inventory, evaluation, and excavation. The presence of Forest cultural resource specialists on all Ranger Districts for portions of each field season has resulted in very few cultural sites or projects "falling through the cracks" with regard to compliance or management. Regular, formal, CRM awareness training sessions for District personnel have paid off in good District Ranger support and understanding for the role of the CRM Program.

The current program has been effective in its basic inventory, evaluation, review, compliance, record keeping, and project support roles. It has been less successful in other key areas. Recent review by the Regional Forester's CRM Taskforce indicates that the Custer program, like the rest of the Forests in Region 1, lacks balance in some critical areas, could be more efficient, and is not in compliance with certain legal requirements.

Specific problem areas in the current program result from an over emphasis on field project support, limited funding, and a concentration on site-specific management. Problem areas in the current program include:

1. lack of comprehensive long-range planning in CRM,
2. lack of planning-related inventory and evaluation efforts,
3. a reactive posture to project support needs,
4. a growing backlog of hundreds of unevaluated sites,
5. lack of any efforts in sampling or predictive modeling,
6. lack of a computerized data base for cultural resource information,
7. lack of formal nomination of sites to the National Register,
8. lack of contextual studies to help assess historic site significance,
9. lack of a strategy to acquire data on poorly known areas,
10. lack of a strategy for interpretation, stabilization, protection,
11. lack of systematic monitoring mechanisms for compliance,
12. lack of program continuity with regard to personnel changes.

Based on the findings of the CRM Taskforce, the Forest has a sound basic program but may be vulnerable to legal challenges similar to those recently experienced in the Southwestern Region. Elimination of some of the deficiencies noted above would increase program costs in some areas and result in cost savings in others. Improvement in the twelve problem areas would definitely result in better management of a unique and finite resource base.

The CRM Strategy developed here will address these deficiencies through better planning, the modification of emphasis areas within the CRM Program to achieve better balance, and by providing a mechanism for improved compliance with appropriate Historic Preservation laws. Comprehensive planning similar to RP3 and design of a site allocation scheme adapted from work in Region 3 will provide the means for the needed improvement (Green and Plog 1983).

A review of the literature on Historic Preservation and discussions with planners from the SHPO and Advisory Council reveal two major contemporary approaches to comprehensive planning which might be utilized in this project. They are the (1) "Resource Protection Planning Process" (RP3) developed by the Park Service and the (2) "Preservation Planning in Context" (PPIC) system developed by the Chief Archeologist of the Advisory Council on Historic Preservation discussed earlier. Alternatives for improvement of the CRM Program over a five year period are examined in relation to the two planning systems.

VI. Analysis and Alternatives

Four alternatives and their effects are considered here for the management of cultural resources on the Forest for the next five years (1988-1993). Alternatives evaluated include:

1. Maintain current program emphasis and approach,
2. Adapt the RP3 planning approach to the needs of the Forest,
3. Adapt the PPIC planning approach to the needs of the Forest,
4. Design a new CRM planning process.

A. Alternative 1

Alternative 1 is a "no action" alternative which would maintain the current program unchanged. The strengths of the present program in field project support, basic compliance, and site specific management would be retained. No significant new program costs would be incurred and the annual CRM budget would remain in the $90,000 to $100,000 range. The backlog of unevaluated cultural sites would continue to grow and would pose an increasing constraint on future management. Few sites would be nominated to the National Register of Historic Places and the Forest would continue in its failure to meet Section 110 of the National Historic Preservation Act. Field inventory efforts would continue to be directly tied to impending ground disturbing project activity. Large areas of the Forest where no ground disturbing projects occur would remain largely unknown in terms of cultural resources.

The lack of predictive modeling or resource allocation efforts would continue to result in individual sites being managed as if they were unique examples of an unknown class. Preproject field inventory would continue to be required in nearly all cases. Changes in budget levels or in key personnel would result in unpredictable shifts in program direction. Gains in site enhancement, stabilization, interpretation, or protection would occur on an unplanned, opportunistic basis. The Forest would make slow gains in understanding the nature and variability of cultural resources as consultant reports and private research efforts were incorporated into the Overview data base. The Forest would remain vulnerable to litigation similar to that experienced by the Southwestern Region. Problem areas in the Regional Forester's CRM Taskforce report would not be addressed.

B. Alternative 2

Alternative 2 would adapt the RP3 comprehensive planning process to the specific needs of the Forest. RP3 is widely viewed as the model approach to Historic Preservation planning and is compatible with current State planning efforts. Contextual studies for Historic resources would have to be undertaken. Formulation of relevant cultural resource questions, assessment of the values of the cultural properties common to the Forest, and efforts at developing broad consensus would take place.

A formal procedure and schedule for the nomination of all significant cultural sites to the National Register of Historic Places would be implemented. The Forest would be in compliance with Section 110 of NHPA. Improvements in site enhancement, interpretation, stabilization, and protection would occur. The backlog of unevaluated sites would be substantially reduced as formal nominations took place. Program direction and continuity would be greatly improved. A rough estimate of the costs of an RP3 derived program is $150,000 to $160,000 per year. Increased funding would be used to either contract out data base work, theme studies, overviews, and nominations work to CRM consultants, or to hire additional seasonal personnel to perform project support work while the Forest CRM Specialists worked on RP3 administration tasks and analyses.

The level of support to other resource programs would remain about the same, as would Antiquities permit administration and quality control efforts. Most ground disturbing projects would continue to require routine field inventory. Some problem-oriented inventories would occur in poorly understood units of the Forest to augment the RP3 data base.

RP3 has proven difficult to apply to smaller land units such as National Forests. It emphasizes site discovery, evaluation, and nomination. It is an idealized system which requires significant amounts of research and analysis prior to management decision making. In some cases, it requires waiting until all effects to all possible eligible sites within a planning area have been assessed before initiating compliance actions with the SHPO and Advisory Council.

RP3 is particularly suited to the management of Historic sites and resources where stabilization, adaptive reuse, and interpretation are major factors. The Custer National Forest has few sites of this type. RP3 is not oriented towards multiple-use or management tradeoffs and does not operate well with less than complete data bases. It is difficult to apply in the very earliest stages of land management or project planning and sometimes requires postponement of SHPO and ACHP consultation until site data are gathered. RP3 uses published National Register eligibility criteria to assess site significance. Problem areas in the Regional Forester's CRM Taskforce report would be effectively addressed by a CRM Strategy modeled on RP3.

C. Alternative 3

Alternative 3 would adapt the Preservation Planning in Context system (PPIC) now under development by the Advisory Council on Historic Preservation to the needs of the Forest. Procedures would be established to address the backlog of unevaluated sites, to schedule enhancement, stabilization, interpretation, and protection efforts, and to improve communications with Native American groups. Scheduled nomination of National Register-quality sites would occur over the five year planning period as targets are included in the Annual Plan of Work. The Forest would be in compliance with Section 110 of NHPA.

Problem-oriented sample surveys in poorly understood units of the Forest would be required. Program continuity would be enhanced. An allocation scheme or set of standardized management prescriptions for broad classes of sites would be developed. Predictive modeling and sampling efforts would result in less need for routine, project-specific field surveys. Program direction and continuity would be enhanced. Support services to the Districts would improve as specialist time became more available for participation in interdisciplinary team projects. Forest vulnerability to litigation on CRM issues would be significantly reduced.

A rough cost estimate for a Forest program modeled on PPIC is $130,000 to $140,000 per year. Increased costs would be for additional seasonal, field level personnel to facilitate modeling efforts, assist in validation efforts, and to work with monitoring and enhancement tasks. Specialist time would be more available for site evaluation, analyses, planning, and nomination efforts.

PPIC is particularly suited to the management of prehistoric archeological sites in the western United States. Such sites predominate on the Custer National Forest. It is designed to facilitate management decision making at very early stages in a project planning process. It does not require relatively complete data bases, but rather operates with data at hand. It uses a locally focused, endemic evaluation system to determine site significance and is designed to facilitate multiple-use management on smaller land units. Problem areas defined in the Regional Forester's CRM Taskforce would be effectively addressed over the five-year planning period.

D. Alternative 4

Alternative 4 would involve the design of a new planning and administrative format for CRM on the Forest. This would require a thorough review of planning literature, discussions with our primary reviewers, and lengthy preparation of a draft process. The new approach would have to be compatible with current Park Service methods and State planning efforts. It would have to address all problem areas defined in the Regional Forester's CRM Taskforce report, operate within the informal and formal planning framework discussed in Section III, and sustain at least the current level of field administration and project support. It is estimated that design of such an approach would require between 18 and 24 months if done In-Service. The process would have to offer substantial benefits in terms of applicability to specific Forest problems and issues to justify its cost of development. Uncertainties about the nature of such an approach preclude a precise estimate of development and implementation costs, although such costs would certainly be more substantial than costs of other alternatives. It is our estimate that development costs would outweigh any particular benefits of a totally new planning approach.

VII. Selected Alternative

Alternative 3 is the selected alternative for improvement of the Forest CRM Program in the next five years. A comprehensive CRM Strategy adapted from the PPIC planning approach and a prehistoric site allocation scheme designed in the Southwestern Region will be developed in Section VIII. Alternative 3 was selected because it:

1. addresses all current program problem areas,
2. is compatible with current State and agency planning efforts,
3. is specifically designed for prehistoric sites in the West,
4. is management-oriented using existing data bases,
5. employs an endemic evaluation system
6. streamlines SHPO and Advisory Council coordination, and
7. is cost effective with regard to expected program improvement.

Alternative 1 was not selected because it offered no improvement in the current management situation. The problem areas identified in the CRM Taskforce report and the recent serious legal challenge in Region 3 make it imperative to bring the Forest program into administrative balance and legal compliance. Continued postponement of formal site evaluations and National Register nominations would eventually lead to conflict or litigation with the various SHPO organizations or other Historic Preservation advocates. Continuation of an emphasis on project-specific inventory would result in more instances where the Forest is caught unaware by problems or issues in poorly understood land units.

Alternative 2 was not selected because it is difficult to apply to smaller land management units like National Forests. It is less applicable to the type of prehistoric archeological sites which are the predominate site type on the Custer Forest. It does not operate well with incomplete data bases and is difficult to integrate with the early stages of project planning. It is not cost effective with regard to expected program improvement. It utilizes a general, National Register-related evaluation system for assessments of site significance rather than locally relevant evaluation criteria. It requires a substantial amount of data gathering and evaluation before management decision making and SHPO or ACHP coordination can occur.

Alternative 4 was not selected because an available planning approach is adequate for the resolution of CRM Program problems. The existence of a planning system which is particularly applicable to western archeological sites and which employs a locally generated, endemic evaluation system, makes design of a totally new approach less attractive or necessary. The PPIC approach has already been successfully applied by the Bureau of Land Management on large surface coal mine planning projects (Niquette and Henderson 1984). The time and costs required for development of a high quality, Forest-specific, planning approach exceed the expected benefits based upon our literature review and consultations.

VIII. Forest Cultural Resource Management Strategy

The following Section develops a CRM Strategy for the Forest for the period 1988-1993. It is presented in a schematic format to facilitate use by field units and nonspecialists. It can be used independently of the preceding narrative and may be implemented upon formal review and Forest Supervisor signature.

A. Purpose

The CRM Strategy is intended to provide a framework to guide all Forest efforts in Cultural Resource Management and Historic Preservation for the period 1988-1993. It is primarily intended to assist District Rangers and Cultural Resource Specialists to implement Forest Plan direction, to improve program management, and to meet all legal review and compliance obligations. It is not intended to serve as a "Cookbook" of basic field techniques, as a basic compliance manual, or as a procedural primer on Forest Service policy. Rather, it provides an orderly and rational framework to facilitate the implementation of Forest Plan direction for an initial five-year planning period.

B. Goal

The goal of Cultural Resource Management is to maintain and enhance Forest historic and prehistoric cultural resource values . Conservation of archeological and historic sites and information for research, public interpretation, and enjoyment by future generations is emphasized.

C. Objectives

The primary objectives of the CRM Strategy are to bring about improvements in CRM program integration, compliance, and effectiveness. This will be accomplished by scheduled implementation of Forest Plan direction, by changes in program emphasis, and by use of a rational planning process. Specific objectives include:

1. improvements in program emphasis and balance,
2. meeting all legal review and compliance requirements,
3. establishment of targets for inventory, evaluation, nomination,
4. adoption of a proactive management stance in Cultural Resources,
5. improvement in CRM support to other resource programs,
6. improvements in program continuity and efficiency
7. adaptation of National CRM procedures to local conditions.

D. Methodology

The CRM Strategy utilizes a recently developed planning approach called "Preservation Planning in Context" (PPIC). It is based on systematic identification, evaluation, and treatment of cultural sites, in the context of existing information on the archeology and history of the Forest. Major components of this approach include:

1. establish cultural contexts for sites to be managed,
2 define endemic evaluation system for assessing significance,
3. define a systematic approach to site identification,
4. define an allocation system or site treatment strategies, and
5. schedule implementation and monitoring efforts.

E. Context

Cultural or Historic contexts refer here to distinctive trends within the broad sequence of events which occurred on the Forest since its first occupation by human groups. Different groups and societies utilized and adapted to changing environments on the Forest in very different ways, depending on their organization, level of technology, beliefs, and means of subsistence. The material remains of this long-term use of the Forest comprise the thousands of cultural sites now coming to light through research and through cultural resource surveys associated with a variety of multiple-use management activities.

A definable prehistoric context might be based on Indian occupation and use of the distinctive, linear, ridge systems of the Little Missouri Badlands over thousands of years. A valid historic context might be defined for the Homesteading Period in western North Dakota ,or for the open-range cattle ranching era in southeastern Montana. Meaningful answers to questions of value, significance, and appropriate treatment of individual cultural sites must be framed against the backdrop of such definable cultural contexts.

Contexts for the prehistoric archeological sites addressed in the CRM Strategy are established in two recent comprehensive analyses of the planning area. "The Prehistory of the Custer National Forest: An Overview" (Beckes and Keyser 1983) and "An Overview of the Prehistory of Western and Central North Dakota" (Gregg and Davidson 1985) form the basis for the development of locally relevant research questions and a preliminary site typology.

A small percentage of prehistoric sites on the Forest are uniquely suited for public interpretation or preservation for heritage value (e.g. Needle Rock Petroglyphs, Pryor Mountain Vision Quest Structures, Hidatsa Eagle-trapping Lodges). The significance of the majority of Forest archeological sites lies in their scientific information content.

Historic sites are important for interpretation, architectural values, historic association, and information content. They will be managed on a project-specific basis until development of a Forest Historic Overview, unless on-going research and theme studies for certain site classes establish valid historic contexts.

Existing information indicates that portions of the Forest were utilized by Indian populations for perhaps 14,000 years and by Euro-American groups for at least 150 years. Data in the Overview studies allow the formulation of broad research questions relevant to the Eastern Montana/Western Dakotas region, which can be applied to specific types of archeological sites known to occur on the Forest.

F. Research Questions

For the five-year planning period (1988-1993) management of prehistoric sites on the Forest which are important for their information content, will be directed towards addressing three broad areas of scientific inquiry. These focus on (1) Culture History, (2) Cultural Ecology, and (3) Culture Process. Existing data indicate that cultural sites located on the Forest are particularly suited to resolution of the following questions in terms of type, age, preservation characteristics, distribution, and function. As more and better information is gathered, more specific research questions may be posed to address such historical and anthropological issues as diffusion, acculturation, and industrialization.

Responsible line officers and cultural resource specialists shall ensure that the use of Forest resources by researchers, consultants, and Forest Service specialists contributes to resolution of these broad questions. Research questions and analytical approaches recommended in the CRM Strategy include:

1. Culture History

   a. Questions
      (1) What prehistoric cultures utilized the Forest over time?
      (2) What is their chronological position and sequence?
      (3) What are their diagnostic characteristics or traits?
      (4) How do they relate to or reflect broader patterns of prehistory on the Northern and Northwestern Great Plains?

b. Approaches
   (1) Identify and evaluate all prehistoric sites on the Forest
   (2) Identify and define local archeological units.
   (3) Identify relative and absolute dates for each archeological unit.
   (4) Identify diagnostic artifact assemblages for each unit.
   (5) Identify local chronologies and relate to regional chronologies.

2. Cultural Ecology

a. Questions
   (1) How did prehistoric cultures articulate with the the Forest environment, through technology and social organization?
   (2) What is the nature of environmental change during the period of human occupation of the Forest?
   (3) How did prehistoric groups adapt and adjust to environmental change sociologically and technologically?
   (4) What are the diagnostic site types for each archeological unit defined on the Forest?
   (5) What are the diagnostic artifact assemblages for each archeological unit defined on the Forest and how were they used?
   (6) What are the similarities and differences in adaptive strategies employed by prehistoric groups geographically and chronologically on the different land units of the Forest?
   (7) What settlement patterns characterize the defined archeological units on different land units of the Forest?

b. Approaches
   (1) Identify environmental resources utilized by prehistoric cultures on the Forest and the extraction technologies employed.
   (2) Utilize floral, faunal, geological and palynological information from Forest sites to improve knowledge of environmental change.
   (3) Identify adaptive changes in artifact assemblages and settlement systems for defined archeological units.
   (4) Conduct comparative technological analyses for data table sites.
   (5) Develop and test predictive site distribution models and relate to analyses of dated artifact assemblages.

3. Culture Process

a. Questions
   (1) What was the relationship between prehistoric economies based upon nomadic hunting and those based upon sedentary agriculture?

(2) What mechanisms were involved in the adoption of an equestrian hunter lifeway by groups occupying the Forest?
(3) What material remains of ceremonial or religious activity exist on the Forest and what can we deduce from these remains?
(4) What was the role of trade, exchange, diffusion, and acculturation in prehistoric cultural developments on the Forest?
(5) Can ethnographic Indian groups be identified in the archeological remains of the Forest and can site distributional changes related to Euro-American impacts be defined?

b. Approaches
(1) Identify Forest sites utilized by nomadic hunting or agricultural groups and define diagnostic characteristics.
(2) Identify Forest sites utilized by equestrian groups and compare with similar age sites occupied by horticulturists.
(3) Identify site classes related to ceremonial or religious activity and relate to oral historical and ethnological accounts of such activity.
(4) Identify site types and areas of the Forest currently used for traditional religious activities.
(5) Identify exotic materials, Euro-American trade goods, pottery types or art motifs characteristic of ethnic or tribal groups and develop distributional models for the Forest over time.

It must be emphasized that these broad research questions are only intended to provide a basic structure for mitigation plan design or independent research at prehistoric sites found significant under NRHP Criterion "D". Care must be taken to ensure that they are not applied in a mechanistic way and that individual site data bases are considered on their own merits. Application of the suggested research questions must not inhibit follow-through consideration of mid-range theoretical issues. This concern or mandate is best addressed during coordination work at the individual site or through scope-of-work and research plan coordination efforts.

The broad research questions and analytical approaches presented here are not intended to restrict research flexibility for private institutions conducting work on the Forest. Rather, they are designed to be broad enough in scope to permit fieldwork at most prehistoric sites to contribute to the systematic improvement of the Forest data base. Their use will ensure that mitigation or data recovery work stimulated by development activities contribute to the resolution of meaningful scientific questions in a systematic fashion. The research questions are relevant to classical anthropological and historical inquiries on the Northern and Northwestern Plains. The goals of more contemporary, problem-oriented research are also compatible with the three broad areas of scientific inquiry addressed here.

Assessments of site significance and decisions on appropriate treatment or use made by responsible line officers and cultural resource specialists, should be based on potential to address these research questions unless other values are defined.

G. Site Types

Information in the Prehistoric Overview documents permits the division of known and expected Forest site types into four broad descriptive classes. These include: Habitation Sites, Limited Activity Sites, Specialized Activity Sites, and Unknown. These site classes are derived from a site allocation study conducted in the Southwestern Region (Green and Plog 1983) but are modified to reflect Northern and Northwestern Plains culture history.

Some historic sites can logically fall into this classification, but will not be routinely included until completion of an Historic Overview and appropriate theme studies. While it may be helpful for responsible cultural resource specialists and line officers to use this framework in their assessments of certain types of historic resources, management decisions must be made in conformance with NHPA regulations and in consultation with the appropriate SHPO.

Habitation sites are defined for the purposes of this document as spatially definable locations containing the patterned material remains of past human occupation and domestic use. Limited Activity sites contain the spatially bounded material remains or other indicators of past human activities related to resource procurement, manufacture, artistic activity or other pursuits, but lack any evidence of domestic use. Specialized Activity sites include those areas where religious or ceremonial practices were the dominant use. The Unknown category is provided for sites where surface visible remains are insufficient to allow for site definition, and for unique or new site types not yet known on the Forest.

Such a rudimentary classification scheme can, of course, be revised or subdivided almost endlessly to reflect particular research interests. Our intent here is to provide a consistent scheme for management purposes, and for use in site allocation decision making. The divisions between living sites, resource extraction sites of various kinds, and sites where ceremonial activity was the dominant use, have historical and anthropological utility which can accommodate most anticipated uses of Forest resources.

Examples of known Forest site types which may be included in the site classification are given here: (Beckes and Keyser 1983)

Habitation Sites	Limited Activity	Specialized Activity
village	quarry	vision quest
camp	workshop	ceremonial lodge
lodge	kill site	rock art
rockshelter	trail	grave
cave	cairn	medecine wheel
	alignment	cairns
	grave	alignments
	rock art	earthworks
	trap or blind	
	earthworks	

This site typology is not meant to be mutually exclusive. Different sites may have had multiple or changing functions at various times. A rock cairn for example, may have originally functioned as a trail marker or simple interment. In later years such a site may come to be venerated because of its associative or ceremonial values. In another case, a rock art panel which was originally inscribed to commemorate a personal victory, may be venerated as a religious site by later occupants of the area. Careful analysis and consideration of the dominant value of individual sites will be required to make accurate management allocations.

Human interments or burials are a special site class because of the concerns of living cultural or ethnic descendants and of the scientific community. Management of historic or prehistoric graves must be judicious and must demonstrate sensitivity to the legitimate views of living cultural or ethnic descendants and of the scientific community. The management policy specified in the Forest Plan (USDA 1987:15-16) will be strictly applied by the responsible line officer.

The discovery of unexpected site types or situations where a site could reasonably fall into more than one of the site classes described above call for further investigation and evaluation. Reference to the regional literature, subsurface evaluation, detailed analyses, and consultation with regional and local specialists are appropriate. Criteria relating to the recognition and evaluation of the site types defined here appear in the following section.

H. Site Evaluation Strategy

The National Historic Preservation Act established the National Register of Historic Places in 1966. Evaluation criteria have been developed for use in assessing the eligibility of cultural sites for inclusion on the National Register. These eligibility criteria form the regulatory basis for the determination of "Significance" and must be applied during the mandatory review and consultation process.

National Register eligibility criteria are, of necessity, very broad in scope. They address key elements of site integrity, design, context, materials, workmanship, and association. Regulatory significance is assigned to sites that meet one or more of the following conditions: (36CFR60.6)

"A" They are associated with events that have made a significant contribution to the broad patterns of history.

"B" They are associated with the lives of persons significant in history.

"C" They embody the distinctive characteristics of a type, period, or method of construction, or they represent the work of a master, or they represent a significant and distinguishable entity whose components may lack individual distinction.

"D" They have yielded, or may be likely to yield information important in history or prehistory.

Although cultural sites are known to exist on the Forest which may be considered eligible for the National Register under any of the formal evaluation criteria, the majority discovered thus far are significant under criterion "D", the potential to yield information. The Forest research questions developed in Section F are intended to provide regional and local relevance for assessments under criterion "D". They answer the question of what constitutes "...information important in history or prehistory" against the backdrop of existing information about the Forest.

Archeological sites associated with historical events such as the Indian Wars or archeological sites important for their artistic elements such as the extensive petroglyph panels on the Sioux Ranger District may be evaluated and managed under criteria "A", "B", or "C". Such sites must also be carefully assessed for interpretative potential and susceptibility to vandalism.

Archeological sites thought or known to be associated with ceremonial or religious activity may be eligible under various NRHP criteria . Such sites must also be considered for special management attention because of the concerns of contemporary Native American groups and the requirements of the American Indian Religious Freedom Act.

Responsible line officers and cultural resource specialists will ensure that all research, inventory, recordation, data recovery, excavations, and mitigation work conducted on the Forest in North Dakota conform with all standards set forth in "Treatment of Archeological Properties: A Handbook" (ACHP 1980), "Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines" (USDI 1983), and with the most current editions of the NDSHPO Standards for Field Inventory and for the Evaluation of Stone Circle Sites.

Formal research designs will be prepared for all in-service fieldwork involving subsurface evaluation of archeological sites and will be submitted for SHPO review. Formal research plans or Scopes-of-Work will be prepared for all subsurface evaluation work conducted under Special Use Antiquity Permits by private researchers or consultants. Such documents will be reviewed by the Forest Archeologist and by the SHPO and will be approved by the responsible line officer. In Montana and in South Dakota the Federal standards cited above will be applied in addition to existing state guidelines (e.g. SDHPC 1987 Guidelines). The full consultation process specified in 36CFR800 will be followed in the absence of any specialized memoranda of agreements.

For the prehistoric sites which comprise the majority of the known cultural resources on the Forest, the following evaluation strategy will be employed by the responsible line officer and cultural resource specialist. The four-phase evaluation strategy is adapted from current archeological literature and was most recently employed by the Bureau of Land Management for prehistoric sites affected by large-scale surface coal mining (Niquette and Henderson 1984). It is closely related to the formal National Register criteria and emphasizes site extent, site integrity, site age, and the potential of the site to address locally and regionally relevant scientific questions previously defined in Section F. Figure 4 illustrates an idealized version of this evaluation strategy for prehistoric sites. The four phases are described below.

Phase 1: Site Size

Site size or extent is a basic variable which must be determined in assessments of possible site significance, in determinations of the potential effect on the site of a proposed activity, and, for a decision on allocation or appropriate treatment. Site size or extent for our purposes refers to both horizontal and vertical dimensions. Judgement must be exercised in this phase of evaluation because not all large sites are necessarily significant, nor are all small sites necessarily insignificant. For the range of prehistoric resources addressed here, site size can be an important correlate of group size, length of occupation, variability of artifact assemblage, and site function. All of these relate to the potential of the site to contribute scientific information relevant to NRHP Criterion "D".

In a management sense, it is critical to know what percentage of a significant site may be adversely affected by planned development activities. Decisions on the scale of mitigation or data recovery efforts, on the appropriateness of proposed private research activities, and upon assignment to a particular use category in an allocation scheme can all be affected by site extent.

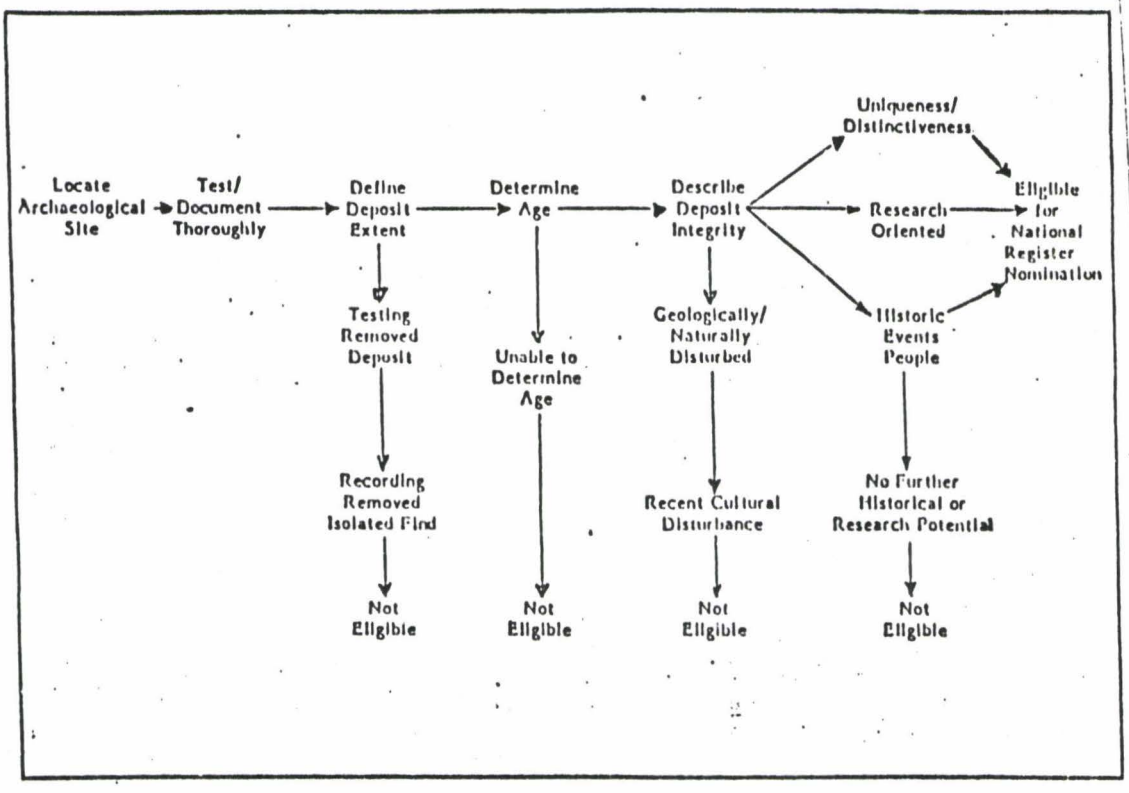


Figure 4: Idealized Flow Chart for Site Evaluation Process
(After Bennett et al. 1982:22)

For example a road or pipeline which would obliterate 90% of a small but significant site, might require substantially more extensive excavation work to achieve compliance by mitigation (e.g., data recovery) than would a road or pipeline which affects 3% of an extensive site. A valid assessment of site extent is then critical to answering the basic management question of how much data recovery constitutes mitigation of adverse effects. Such subsurface evaluation techniques as soil probes, augers, shovel tests, and formal test units have all been shown to be necessary and appropriate at various times for size assessment at most Forest site types. Furthermore, data obtained during such work is often critical to the design of subsequent mitigation work if project impacts prove unavoidable.

Phase 2: Chronology

An assessment of the age or of a prehistoric site is vital to decisions on significance, and appropriate treatment. The suspected presence of relative age indicators such as pottery or projectile points, or the presence of radiometrically datable materials such as charcoal or bone are important indicators of site eligibility on an individual basis.

Sites which contain no indications of age are difficult to relate to similar sites in the construction of local chronologies or regional syntheses. They are quite limited in potential information content, although they may be useful in certain distributional and functional analyses. Such sites may also be of value for training or public interpretation if they possess unique features such as rock art or structures.

Reasonable attempts to determine the potential of a prehistoric site to contain relative or absolute age indicators have been demonstrated to be a basic requirement for evaluation and management on the Forest. Because of the rudimentary state of our understanding of many archeological units, it is assumed here that chronology will continue to be a major focus of Forest cultural resource endeavors for the five year planning period.

Phase 3: Site Integrity

Site integrity is a relative quality which refers to the condition of the cultural deposits present. A site which is large, deep, datable, and is in pristine condition with regard to natural erosion, vandalism, or other disturbances may be a very significant resource because of its varied information content if previous study of such sites is lacking. A similar site which has been subject to major disturbance of its primary stratigraphic context and cultural deposits is less valuable unless it has other associative or historic values. Sites with deposits which are particularly suited to the preservation of rare fragile or perishable artifacts are particularly important. On the Forest such sites include caves, rockshelters, and middens.

Site evaluation for the purposes of determining significance, for deciding appropriate treatment, and for assessing project effects and mitigation measures must address the issue of integrity. Past experience has shown that a high percentage of archeological sites on the Forest contain intact cultural deposits of considerable scientific value and that a small number are of national and international significance. Archeological and geological methods of assessing subsurface integrity will be routinely required in site evaluations on the Forest.

Phase 4: Research Potential, Distinctiveness, Association

The final stage of evaluation considers the findings of the three preceding phases against the background of what is known about regional culture history. To be eligible for nomination to the National Register and for rigorous management which may constrain other legitimate Forest resource activities, a site must be able to address meaningful research questions, or be associated with a significant historical event or figure, or be a unique representative of a distinctive class, or have high artistic merit. The responsible line officer and cultural resource specialist must, in consultation with the SHPO, make this determination.

The Forest research topics defined in Section F are the basic test of relevance for prehistoric sites deemed significant for information potential. Professional recommendations by the cultural resource specialist and SHPO should be considered definitive in preliminary site evaluations and decisions on appropriate treatment. Formal determinations of National Register eligibility will be obtained as an adjunct of nomination or, in cases where the Forest and the SHPO cannot agree on the status of a site.

Existing information indicates that the majority of prehistoric sites on the Forest which possess depositional integrity can provide data relevant to the research questions posed earlier. Appropriate management will differ depending on potential impacts to the site, research needs, scale of anticipated impacts, and anticipated future needs. Sites which are important because of association with historical individuals or because of artistic values will be managed in a manner consistent with preservation, interpretation, and protection of those values.

Evaluated, significant sites will be formally nominated to the National Register of Historic Places in accordance with the schedule proposed in Section L, Implementation. Multiple property nominations by defined context will be emphasized to obtain maximum efficiency. Contextual nominations allow initial definition of a distinctive cultural context by submission of a detailed background document. Newly discovered sites which fit the defined context can be added to the initial nomination by submission of site record documents on a regular basis (USDI 1986).

Examples of contexts now being considered for establishment on the Custer National Forest include: 1) ridgetop occupations, 2) occupied rockshelters, 3) cribbed log structures, 4) ceremonial lodges, 5) vision quest structures, 6) stone circle sites, and 7) butte top occupations. The combination of a distinctive site type or cultural adaptation, a distinctive environmental or topographic setting, and a definable geographic distribution contributes to the establishment of valid cultural/historical contexts. A balanced program of systematic nomination will involve newly discovered sites as well as unevaluated sites in the current backlog.

Implementation of the recommended evaluation strategy, in conjunction with the Forest research questions developed earlier, provides a means of adapting the broad eligibility language of the National Register to local Forest conditions. The following paragraphs provide further guidance on the recognition and possible significance of types of sites known to occur on the Forest.

I. Site Attributes

Certain generalizations can be made regarding common attributes which contribute to, or detract from, the quality of significance for the site types defined in Section G. These attributes are derived from existing information about the prehistory of the Forest, are directly related to the site evaluation elements discussed previously, and are addressed in the Overviews.

1. Habitation Sites

Habitation Sites which possess good depositional integrity will be considered significant as a site class for the purposes of this CRM Strategy. Such sites range in complexity from large village sites on the Sheyenne River, through extensive tipi ring sites on the Little Missouri, to small nomadic hunting camps throughout the Forest. Common attributes which make well preserved Habitation Sites significant are:

a. the presence of datable materials or artifacts,
b. the presence of intact, buried cultural deposits or strata,
c. the presence of perishable artifact classes,
d. the presence of extensive, varied, artifact assemblages,
e. the presence of floral and faunal remains, and
f. the presence of specialized activity areas and features

While not every Habitation Site exhibits all of these attributes in equal measure, the majority of those which have been studied in the past have possessed many of them. They have the greatest potential to address relevant research questions of any site class because of the great diversity of information they often contain. Application of the evaluation strategy to specific Habitation Sites may show that some members of this site class are not as significant as others because of redundancy or other factors.

This will usually be the result of one of three factors, including: 1) erosion or natural disturbances, 2) vandalism or illicit artifact collecting, and 3) the nature of the site. Disturbance and vandalism remove critical context and chronological indicators. Some Habitation Sites, notably tipi ring sites, may lack artifact assemblages or cultural deposits altogether because of the nature of the particular occupation. False Cougar Cave and Horseshoe Cave (two rockshelter Habitation Sites) are among the most important and informative sites on the Forest. The Anderson Divide and Cinnamon Ridge site complexes are extremely important to our understanding of Cultural Ecology in the Little Missouri Badlands. Yet taken individually they consist of a series of small, relatively unimpressive, hunting camps. Thus, while Habitation Sites as a class are considered eligible and significant, only individual evaluation can decide specific cases.

2. Limited Activity Sites

Limited Activity Sites as a class contain resources which have generally proven to be significant, as well as site types which have not. Limited Activity Sites which are considered to be significant for the purposes of the CRM Strategy possess these attributes:

a. they are relatively or absolutely datable,
b. they contain intact artifact assemblages,
c. they are in relatively pristine condition,
d. they are uncommon, rare, or unique on the Forest,
e. they are associated with historical events or figures.
f. they exhibit high artistic values.

Examples of known Forest Limited Activity sites which have been demonstrated to be significant with regard to the potential to contribute valuable scientific information include lithic quarries, lithic workshops, kill sites, and game blinds. Antelope and ESP Quarries, the Sam Lei Bison Kill, and the Gene Creek Game Blind are all Limited Activity sites of considerable scientific value. The information from such sites complements and helps refine data from habitation sites because Limited Activity sites often reflect the specialized resource procurement tasks which were oriented around more permanent sites. A well preserved site of this type can be said to function as a very clear, still photograph of a narrow range of past human activity.

Known Limited Activity sites considered significant under criteria other than information potential include: historic trails, petroglyphs, and pictographs. Trails associated with the movements of key military figures of the Indian Wars period such as Generals Custer, Crook, and Sully are significant because of their association with people and events of broad historical importance.

The etched names of two of Custer's cavalry troopers at the Custer's Initial Rock site have limited information potential, but are significant for their associative value and for public interpretation. The spectacular rock art sites on the Sioux Ranger District are as significant for their artistic value as for their high information content.

Limited Activity Sites which may not be generally significant are those which are undatable, have very few or no associated artifacts, or have been damaged by natural forces or human activity. Isolated lithic scatters, chipping stations, cairns, and rock alignments may require no more than simple recordation or avoidance of project disturbance.

3. Specialized Activity Sites

Specialized Activity sites have been defined here as sites resulting from ceremonial or religious activities. They may be considered significant because of their potential to yield important information, or because they embody a distinctive structural style, or because of artistic values. In a management sense this class of site may have additional significance because of importance to contemporary Native Americans. The responsible line officer will take such site use into consideration in multiple-use planning and decision making.

Known Specialized Activity sites on the Forest which are considered to be significant in terms of the criteria established in the CRM Strategy include the Trenk Ceremonial Wheel, the Pryor and Beartooth Mountain Vision Quest structures, the Mandan-Hidatsa Eagle Lodges, certain rock art sites, and a complex of burials, rock cairns, and rock alignments on the McKenzie Ranger District.

The recognition of Specialized Activity sites requires a combination of a thorough grasp of the archeological and ethnological literature and good public involvement with Native American groups around the Forest. Sites being used for contemporary religious or ceremonial purposes can sometimes be recognized by (1) the presence of unusual items such as bound bundles of sweetgrass, tobacco, or other plant materials, (2) the presence of new or the reuse of of old vision quest structures, (3) the presence of offerings at existing rock art sites, or (4) the appearance of unusual rock cairns or alignments. Good rapport and public involvement with neighboring Native American tribal groups is by far the best method of gaining management information about contemporary religious use although there is often a reluctance to discuss such sites by contemporary Native Americans.

The responsible line officer and cultural resource specialist will evaluate all sites recorded in the five year planning period against the recommended Site Evaluation Strategy. Reference to the archeological and ethnological literature, consultation with the SHPO and other experts, and public input and scoping will affect determinations of site significance.

Management prescriptions for significant sites will be formulated in accord with the site allocation process discussed in Section K. The primary goal of site management is to preserve and enhance the values which make the site significant. Management will vary by site type, proposed action, and research needs. The following section presents guidance for the systematic identification of significant cultural sites for the five year planning period.

J. Site Identification Strategy

The identification strategy is intended to accomplish several tasks including: 1) the location and recording of significant cultural sites with regard to the legal review and compliance process described earlier, 2) the location of significant cultural sites to increase our understanding of such phenomena on the Forest, and 3) the identification of significant cultural sites for public interpretation, stabilization, and protection. The approach recommended in this CRM Strategy is based on past experience and existing knowledge of the Forest, and upon current literature regarding inventory, sampling, and predictive modeling. It is oriented towards the types of prehistoric resources which make up the preponderance of the sites expected to occur on the Forest, but is applicable to other resource types as well.

For the five year planning period the Forest will emphasize the development and refinement of predictive models for site distribution. Models will be developed which take into account the existing data base, the research topics developed in Section F, the varied environments of the seven widely dispersed Ranger Districts, and the support needs of other resource programs. New data will be generated by In-Service, problem-oriented surveys, by private researchers, and by consulting firms connected with specific project development activities. Examples of areas where existing information and management needs will sustain predictive model development include: 1) the Little Missouri National Grasslands, 2) the Pine Parklands environment of the Ashland and Sioux Ranger Districts, and 3) the Pryor Mountain unit of the Beartooth Ranger District.

In-Service inventory work will be focused on portions of the Forest where existing information is non-existent or insufficient for good management, in accordance with the inventory targets outlined in the Implementation Section. Forest-initiated field surveys will focus on providing data for initial model building, on the validation and refinement of existing models, and for problem-oriented research needs.

Consultant surveys will be actively administered under scope-of-work documents or research designs to meet both specific project needs and to contribute to the systematic refinement and testing of site distributional models for the area. Project-specific inventories will take place as required by existing memoranda or procedural agreements, and when the Forest and SHPO concur that significant cultural sites are likely to occur in a project area.

Routine, pre-project field inventories will not be required in areas which the Forest and SHPO concur are unlikely to contain significant cultural sites. Such low probability areas will be sample surveyed at a lower intensity, as an adjunct of predictive model development and validation. Predictive site distributional models will conform to current qualitative standards for the Northern and Northwestern Plains area as determined by literature review, SHPO consultation, and discussions with recognized regional and local experts.

The delineation of specific Forest inventory targets and the use of a modeling approach will correct the deficiencies of the past inventory program, will eliminate "blindspots" on poorly understood Forest units, and will result in measured, systematic, improvement in Forest cultural resource management. It will facilitate the development of a forward-looking, active CRM Program which is regularly improving and gaining effectiveness.

Broad standards for field inventory and site recordation efforts are established in the documents cited in the Site Evaluation section. In addition to that direction, the following stipulations will be required:

1. All inventory will be under direct supervision of a journeyman level Principle Investigator as defined in the Secretary of Interior's Standards and Guidelines and ARPA regulations.

2. All inventories which exceed 40 acres in extent or 1 mile in length will be conducted under a formal scope-of-work or research design which has been reviewed and accepted by the Forest and by the SHPO.

3. A written survey report which uses the standardized Custer National Forest inventory format and site record form will be completed for all inventories and will be furnished to the SHPO.

4. Any written State inventory or report guidelines which conform to the Federal guidelines and any standardized State site form will be used.

5. All inventories will be mapped in the Cultural Resource Atlas maintained on each Ranger District.

6. All inventory reports produced by private researchers or consultants must be formally reviewed and accepted by the Forest and by the SHPO.

7. All inventory reports and supporting documents will be made available for use by the public and by the Historic Preservation community when release of such information will not compromise site security or site values or conflict with Forest Service policy on Freedom of Information Act requests.

8. Inventory data will be periodically synthesized in regularly scheduled updates of the Forest Overviews.

9. Standards of recordation for Historic sites will reflect currently acceptable methods as defined in consultation with the SHPO.

10. Cultural resource consultants will be required to complete all necessary NRHP nomination forms for eligible sites they discover during inventory or which they formally evaluate by subsurface testing. Completion of nomination forms is defined here as a routine part of the initial inventory process whenever sufficient data for eligibility determinations is present.

Redundant or rote field inventory work to locate every possible surface-visible cultural site will not be conducted on every project. Rather, inventory efforts will reflect a good faith attempt to locate significant cultural sites predicated upon existing Overview data , current analyses, and current models. Sufficient information exists about many portions of the Forest to allow reasoned projections to be made in consultation with the SHPO regarding the type and likelihood of cultural sites within a given project area.

Large projects such as timber sales or land exchanges will be stratified on environmental and topographical grounds. Inventory efforts will be scaled to the projected site types and frequencies by zone or setting based on existing information and experience. Areas scheduled for concentrated ground disturbance (landings, road corridors, etc.), and areas of projected high site density or probability will receive the most intensive scrutiny. Less intensive field survey coverage will occur in projected low site density zones or in areas where project disturbance is less likely. For example, those portions of a timber sale which lie within the area covered by the Environmental Assessment, but which are outside the specific cutting units and which will be unaffected by roads or landings. Another example is a steep, north-facing slope within a timber sale, when previous investigations in the area have shown such locations to have a very low site density or probability. Examination of a representative sample of projected low site probability areas will take place to validate and refine the model. The appropriate SHPO will be involved in model development and will be kept appraised of model validation efforts and results.

For the purposes of the CRM Strategy, inventory or primary recordation will include some steps normally considered part of site evaluation. On many prehistoric sites this means that sufficient data will be gathered in the inventory stage to permit a preliminary assessment of site significance to be made using the evaluation process discussed earlier. In most instances limited subsurface evaluation should be employed to provide data on site extent, site integrity, and site complexity. Soil probes, shovel tests, establishing a small stratigraphic profile along a cutbank, power augers, and limited formal excavation of test pits are appropriate methods to employ in the inventory stage. On historic sites this will include a preliminary deed or title search to ascertain if the property has important associative values. Efficient and cost effective use of field time requires that some blending of the identification and evaluation stages occur. Extensive subsurface evaluation will normally require preparation of an administrative document such as a scope-of-work. The Forest will no longer support a standard policy of avoidance of insufficiently evaluated sites. A site must be shown to be significant before project redesign efforts to avoid impact will be considered.

Remote sensing techniques are appropriate on large-scale inventories. Use of magnetometers, sidescan radar, phosphate analysis, aerial photography, and other remote sensing techniques should be considered for in-service or privately sponsored inventory work to complement pedestrian survey.

The generalized Identification Strategy proposed here rests on two basic premises: 1) all Forest undertakings will be considered for the appropriate level of cultural resource inventory, and 2) systematic, problem-oriented, inventories will be conducted by the Forest to improve management. The following Section provides an Allocation framework for identified significant sites.

K. Site Treatment Strategy

1. Allocation

Sufficient information now exists about Forest cultural resources to allow the formulation of generalized treatment strategies or management prescriptions for broad classes of cultural sites. Sometimes referred to as "site management classes, such an approach permits the "allocation" of site types into predesigned management categories which can be considered at very early stages in project planning. The use of Allocation strategies is quite common in other resource management programs in the Forest Service, but is relatively new in Cultural Resource planning and management. It also facilitates balanced long-term management by assigning certain values or potential uses to the various types of Forest sites, for consideration in multiple-use decision making. It will ensure that the management of cultural resources over the five year planning period is the result of rational planning rather than haphazard reaction to external demands and projects.

In the preceding sections on definition of site types and on evaluation of site significance we identified several broad classes of prehistoric sites which may be considered to be important for such values as information content, historical association, or religious use. Broad research topics based on existing knowledge about Forest resources were developed to provide local and regional relevance for assessment of the value of the scientific information in a given site. In this section a multistage allocation scheme originally developed for the New Mexico National Forests (Spoerl and Tainter 1983) is simplified and modified to reflect Northern Plains culture history and management needs. It provides for both preservation and conservation needs and incorporates such basic approaches to site management as:

a. preservation in place with no disturbance,
b. stabilization and protection,
c. adaptive reuse and rehabilitation,
d. mitigation by data recovery and recordation,
e. consumption for research purposes, and
f. removal from further consideration.

It provides for research, for interpretation, for realistic use of resources and for pure preservation of outstanding sites. As is the case with most portions of the CRM Strategy, the management prescriptions defined here are focused on the prehistoric sites which comprise the majority of the resources known or expected to occur on the Forest. Such sites are viewed here as important nonrenewable resources in public stewardship. Certain types of Historic sites may logically be included in this approach, but will require additional contextual studies and consultation until a comprehensive Historic Overview is produced.

All sites recorded in a given year will be allocated into management classes in accordance with this system. A percentage of the backlog of unevaluated sites now in the Forest records will be allocated in a similar fashion, in accordance with the implementation schedule discussed in a Section L.

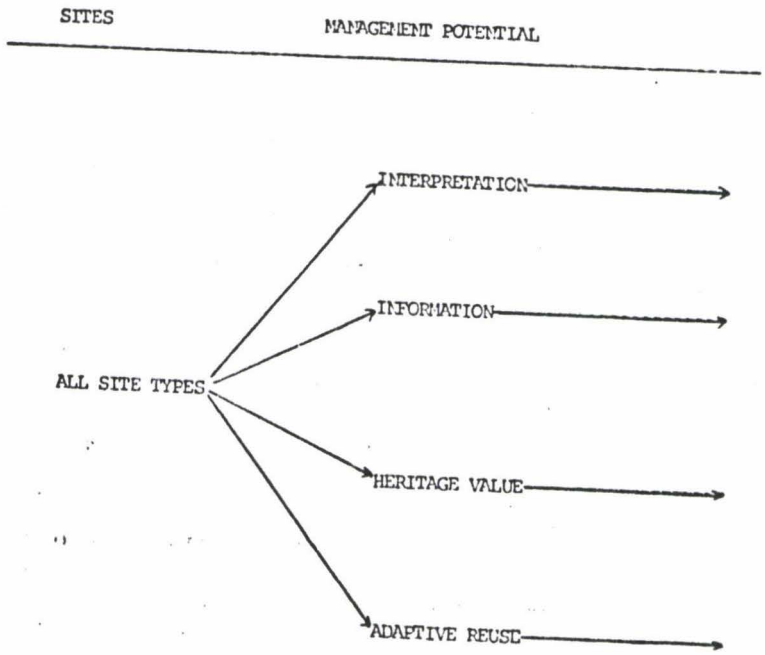
The allocation system is based on several attributes, including: Management Potential, Site Condition, Site Type, Site Size, and Allocation Steps 1 through 3. The Management Potential category is divided into four possible use classes, including: Interpretation, Information, Heritage Value, and Adaptive Reuse. The potential use classes are defined as follows: (See Figure 5).

(1) Interpretation: Sites assigned to this category are particularly suited for educational purposes and for the enjoyment of the public. Artistic, architectural, or other interpretable aspects of the site clearly exceed other site values. Location, accessibility, and site security factors are suitable for a visitor information site.

(2) Information: Sites assigned to this class comprise the majority of sites now known or projected to occur on the Forest. They are important because of their potential to yield or contain information important to local or regional culture history. Most sites in this category contain data relevant to the Forest research topics discussed in Section F, but other unanticipated types may be discovered. Flexibility and room for judgement must be retained for possible new site and data categories. The Information category is divided into three subtypes, including:

> (a) Preservation: includes all sites considered to be rare, unique, or sufficiently valuable in an informational sense to justify very restrictive management. This class of sites is removed from immediate use and active protection or stabilization measures are appropriate. Mitigation of potential adverse project effects by data recovery is not appropriate. Consumption for research purposes is rarely permitted under even the most rigorous research designs and conditions. Preservation for future use is emphasized. Examples of known Forest sites which fall into this category include: False Cougar Cave, Horseshoe Cave, the North Cave Hills rock art sites, and Lightning Spring. All sites in this category are eligible for inclusion in the National Register of Historic Places and will be nominated.

Figure 5: Allocation Step 1



Apply site typology and evaluation criteria to sort all known sites by most appropriate management approach.

(b) Conservation: includes the great majority of Forest sites which have retained good context and integrity. Sites in this category are actively protected and managed for the appropriate use. Mitigation of potential adverse project effects by data recovery is appropriate. Consumption for research, training, or experimental purposes are valid uses. Sites which are significant in regard to the Forest research topics discussed earlier may be used for private or in-service studies which meet Forest and State standards. Sites which are intact and which appear to be significant for unanticipated research purposes or for very specialized research are placed in a Conservation Pool management class and are preserved for future study.

Examples of known Forest sites which fall into the Conservation category include the Cinnamon Ridge and Anderson Divide site complexes; the Big Spring, ESP, and Antelope Quarries; and the majority of the open camp and limited activity sites on the Ashland and Sioux Ranger Districts. All sites in this category are eligible for inclusion in the National Register of Historic Places and will be nominated.

(c) Removed from Consideration: sites in this class are professionally evaluated using the evaluation scheme discussed earlier and are judged to have no significant information potential. Such sites are ineligible for inclusion in the National Register of Historic Places. The initial recordation and evaluation constitute all necessary management consideration. All sites found to be ineligible for NRHP nomination through Forest Service/SHPO consultation may be placed in this category at the discretion of the responsible line officer and CRM specialist.

(3) Adaptive Reuse: Primarily applies to historic sites such as Sage Creek Cabin, Big Park Cabin, the Denbigh Experimental Station, and Rock Creek Cabin. This type of site may continue to be used for administrative purposes. Maintenance and improvements must conform to the historical values of the building. Removal of an historic site and relocation to avoid project effects may be considered appropriate for sites in this use category. Sites in this category are usually eligible for nomination to the National Register of Historic Places and will be regularly nominated.

(4) Heritage Value: Sites in this use category include Specialized Activity sites important to contemporary Native American groups for religious or ceremonial purposes. They may or may not be eligible for nomination to the National Register of Historic Places. Such sites will be managed to preserve their cultural values, accessibility, and integrity in relationship to sound multiple-use practices. Examples of known Forest sites which fall into this category include the Pryor Mountain Vision Quest sites, the Blue Buttes site complex, and some rock art sites. It should be noted that such sites need not be managed for exclusive use by any groups or individuals. Sensitivity and public involvemer are required in the management of sites in this category.

2. Site Condition

The attribute of Site Condition is critical in the assignment of resources to the management categories described above. Site Condition affects decisions about information potential, interpretive value, and the appropriateness of data recovery or other mitigative measures. For the purposes of the CRM Strategy site condition is divided into three broad subcategories (See Figure 6), and include:

a. Intact: Refers to sites which have very little disturbance by man or natural forces and which possess integrity of form, context, and deposition. Sites which have had subsurface evaluation but which possess undisturbed areas or deposits are considered Intact. Such sites will be managed to retain their cultural values.

b. Excavated: Refers to sites which have been extensively studied and disturbed by previous professional excavation. Sites which have been partially evaluated but which retain undisturbed areas or deposits do not fall into this category. Sites such as Ludlow Cave which have been virtually exhausted by subsurface work may fit this category. Such sites may be suitable for interpretation and must be evaluated for Heritage, Associative, and Historical values. In the absence of such values, totally excavated sites may be removed from further management consideration.

c. Extensively Damaged: Refers to sites which have lost all informational and interpretive value through damage by natural forces or human action. Sites which are extensively eroded to the point of having no primary context or sites which have been systematically damaged by pothunters and illicit artifact collectors fall into this category. Such sites may be placed in the research pool for further study, but will more likely be removed from further management consideration.

Professional judgement, knowledge of the relevant literature, field experience, and consultation with the appropriate SHPO will be required to assign specific sites to specific management categories using the site condition attribute. It is recognized that condition is a normative attribute which must be tempered by sound judgement and detailed knowledge of the area.

3. Site Type

The Site Type attribute refers to the unsophisticated descriptive classification discussed earlier. For the purposes of allocation into broad management categories, site type consists of Habitation, Limited Activity, Specialized Activity, and Unknown (See Figure 6).

4. Site Size

Site Size is a descriptive attribute which refers largely to habitation sites. It is useful for initial sorting into management classes but is less applicable to other site types. Size may be very precise or may be estimated, and sound professional judgement must be exercised in assigning weight to this attribute.

5. Allocation Step 1

Sites which have been evaluated for the attributes described above are ready for further consideration in the first of three Allocation steps. All site types except historic sites slated for adaptive reuse are at this stage assigned to either a "Preservation" or "Conservation" management category (See Figure 7). The assignment to the Preservation and Conservation categories is made on the basis of a judgemental sample of the sites recorded in a given year and of a set percentage of the current backlog. Care must be exercised to minimize bias and to select a representative sample of site types for both categories in both time and space. Allocation decisions will also be made on a site-specific basis in consultation with the SHPO, for sites threatened by immediate project impacts, and where rapid decisions must be made regarding mitigation measures. As generation and refinement of predictive models takes place during the five year planning period, a random sample of newly discovered and backlog sites may be employed for the Conservation category.

Because sites suitable for the Preservation category are uncommon and because of the management constraints which apply, random selection is not appropriate for the allocation of such sites. Sites for the Preservation category will be selected by the Forest Archeologist from the sites recorded in a given year and from the backlog of existing sites. Candidates for this class will be recommended by the District Cultural Resource Specialists and will be picked on the basis of professional judgement and knowledge of Forest resources. The appropriate SHPO will be consulted annually on the list of preservation candidates. Retention for future needs is the primary goal for sites in the Preservation category and such sites will impose the greatest constraints on other resource activities which may occur in their vicinity.

6. Allocation Step 2

At this stage of analysis all sites which were assigned to the Conservation category in the first allocation are further subdivided into Research Use and Research Pool classes (See Figure 7). The Research Use class will contain sites with potential to address relevant scientific questions on the Forest. Those sites recorded in a given field season and a set percentage of the backlog of unevaluated sites, which do not appear to contain data relevant to the defined Forest research questions will be evaluated for assignment to the Research Pool. Such sites will be managed for future potential use and study.

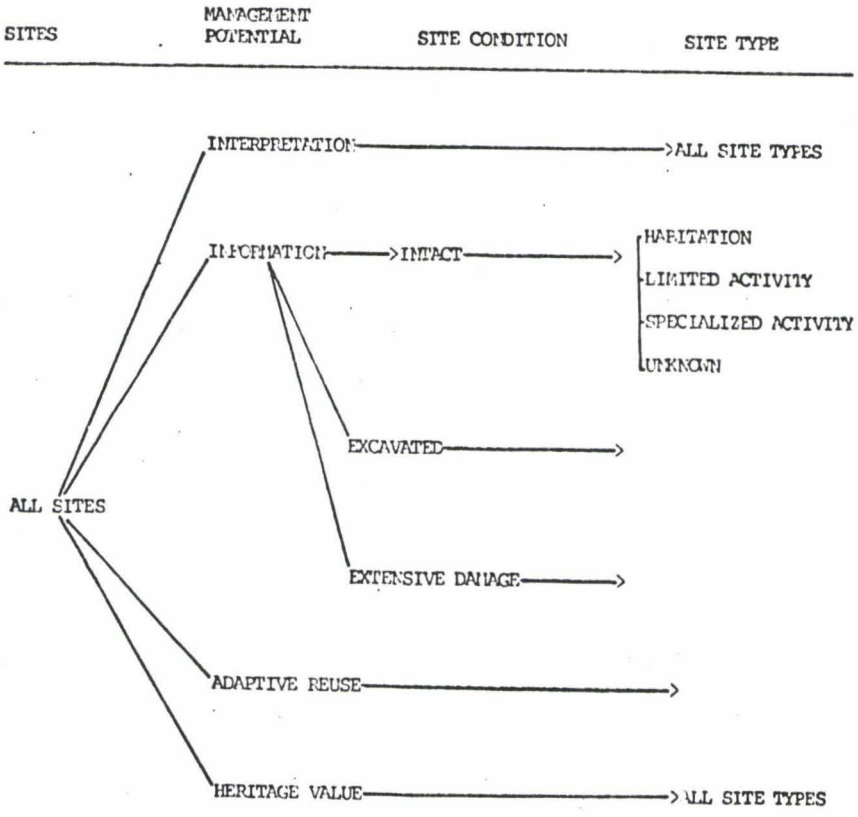
Given the broad nature of the Forest research questions developed earlier, it is assumed that few sites will initially be assigned to the Research Pool. Potential interpretive sites are divided into those with on-site potential and those for which interpretation in literature is suitable. Research Use sites are available for private or Forest-sponsored research activities aimed at resolution of relevant scientific questions.

7. Allocation 3

In the final stage of the allocation process sites which were assigned to the Research Pool class are reassessed and are divided into two subcategories: "Future Use" and "Removed From Consideration" (See Figure 7).

Future Use refers to sites which are in acceptable condition but which do not appear to contain information directly applicable to the Forest research questions developed earlier. Such sites will be managed to retain their information value but may be utilized any time a valid use is developed. Sites in this category may be used for private research, for training, or for experimental purposes. Mitigation of potential project effects by data recovery is appropriate. Sites removed from further management consideration are those which have been extensively damaged, have been completely excavated, or have been professionally evaluated and found to be insignificant with regard to the NRHP eligibility criteria and this plan.

Figure 6: Allocation Step 2



Apply Site Evaluation criteria and field data to allocate sites by management potential, site condition, and site type.

The allocation process provides a rational framework for balanced site management. It is based on existing knowledge of Forest resources and upon professional judgement. It provides a mechanism for considering sites as broad classes at a very early stage in land management planning and should facilitate the review and compliance process. Forest and District cultural resource specialists are responsible for compliance coordination and for providing professionally sound allocation recommendations to the appropriate line officer. The Forest Supervisor is responsible for ensuring that the Forest CRM Program is in compliance with the CRM Strategy and Forest Plan. The following section will discuss CRM Strategy implementation and targets for the five year planning period.

L. Implementation Schedule

Implementation of the CRM Strategy will begin in the fourth quarter of Fiscal Year 1988 after review and approval by the Forest Supervisor, the SHPOs, and the Advisory Council on Historic Preservation. Implementation can occur by increments in relation to fiscal support and personnel levels, but is estimated to require three full-time Cultural Resource Specialists. The use of additional seasonal personnel or technicians will facilitate implementation. The following schedule is broken down by primary task and by year. Targeted tasks will be incorporated into the annual plan of work in each year of the planning period or as the situation dictates.

Task 1: Compliance

This term refers to review and consultation mandated by various Historic Preservation laws. Compliance is the joint responsibility of the appropriate Cultural Resource Specialist and Line Officer. Compliance actions will be undertaken annually as directed by the CRM Strategy, by the specific Memoranda of Agreement in place in the three States, and by the regulations in 36CFR800.

Target:

The Forest target for each year of the five year planning period is full legal compliance in Cultural Resources as defined in the CRM Strategy document. In the area of NRHP nominations this will consist of the nomination of a minimum of 20 properties annually.

Task 2: Establish Context

The Forest Overviews are the primary documents for establishing cultural and historic contexts. The Prehistoric Overview will be regularly updated to reflect new information, new questions, and new analytical techniques. A series of theme studies for distinguishable classes of historic sites and the eventual preparation of an Historic Overview is anticipated during the first five-year planning period.

Targets:

1988: Develop contextual nomination for ridgetop sites in North Dakota.
Update and revise 1983 edition of Prehistoric Overview.

1989 Develop contextual nomination for stone circle sites Forest-wide.
Contract joint FS-BLM Historic Overview.

1990 Develop contextual nomination for Wooden Lodges Forest-wide.
Review and accept joint FS/BLM Historic Overview.
Develop contextual nomination for Homestead Era sites.

1991 Develop contextual nomination for Rock Art sites Forest-wide.
Develop contextual nomination for Rockshelters and Caves.
Develop contexts for Ranching and FS Administrative sites.

1992 Develop contextual document for open habitation sites.
Develop historic context for hardrock mining sites.
Develop historic context for early timbering sites.

1993 Update and revise 1988 edition of Prehistoric Overview.
Prepare five year CRM Strategy reflecting new data and goals.

Task 3: Identification

This refers to inventory work by private researchers and consultants to be administered in accordance with the CRM Strategy. All Forest Service undertakings will be considered for the appropriate level of pre-project inventory and evaluation. In-Service inventory efforts will be focused on generation and refinement of predictive site distributional models. Native American groups with present or former cultural ties to areas now incorporated into the Forest will be contacted annually to inform them of our intention to issue ARPA permits and to seek information on religious or ceremonial site usage or concerns.

Targets:

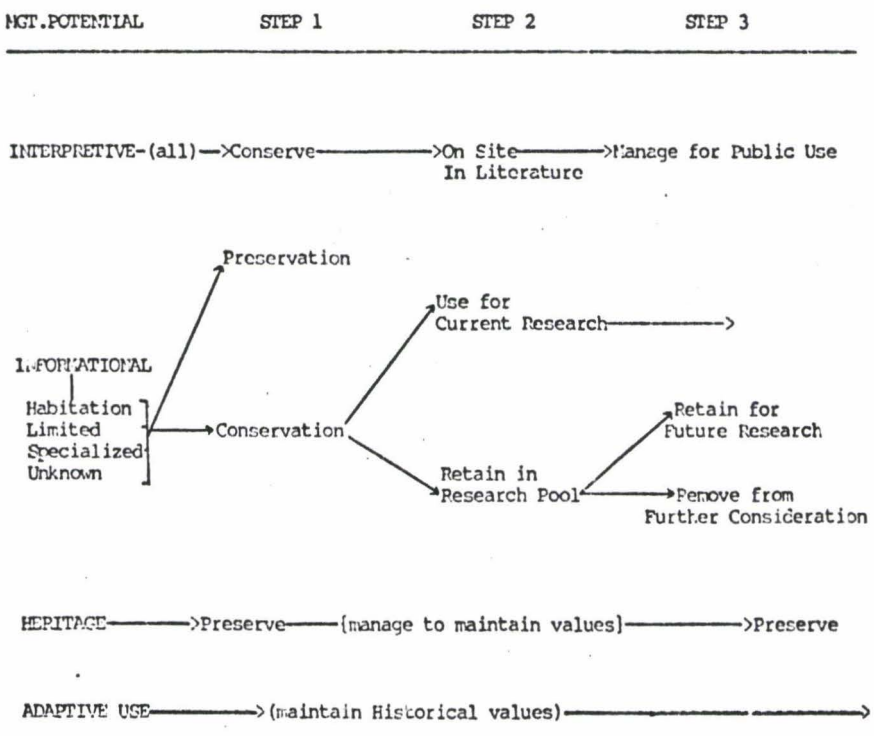
1988 Conduct problem-oriented survey in Marmarth/Medora area.
Develop distributional model for ridgetop archeological sites.

1989 Refine LMNG site model by follow-up inventory.
Develop model for Pine Parklands archeological sites.
Conduct problem-oriented survey in South Cave Hills.

1990 Refine Parklands model by follow-up inventory.
Conduct problem-oriented inventory Slim Buttes.

1991 Develop distributional model for Homestead/Ranching sites.
Conduct problem-oriented survey Beartooth Plateau/High Lakes.

Figure 7: Full Allocation



Apply evaluation criteria and field data to allocate sites valuable for their informational content into Preservation and Conservation categories. Further allocate Conservation category into sites used for current research needs, into sites retained for future research needs, and into sites removed from further management consideration because of damage or other factors.

1992 Refine Homestead and Ranching model by field proofing.
Conduct problem-oriented survey Pryor Mountains.
Develop model for Beartooth prehistoric sites.

1993 Assess costs and benefits of modeling efforts Forest-wide.
Develop refined modeling input for new CRM Strategy.

Task 4: Evaluation

Requires that all sites recorded in a given year will be assessed by means of the formal evaluation process defined in the CRM Strategy and will be allocated to a site management class. A set percentage of sites included in the backlog of unevaluated resources will be similarly evaluated and allocated to reduce the backlog by 50% during the five year planning period. Sites evaluated as clearly significant and which are allocated to the Preservation or Conservation management categories will be routinely nominated to the National Register of Historic Places. Multiple property nominations by distinguishable contexts will be emphasized for maximum efficiency. Assess needs and opportunities for interpretation, stabilization, and protection.

Targets:

1988-1993 Annually evaluate all newly recorded sites.

Annually evaluate and allocate 10% of backlog sites.

Annually nominate a minimum of 25 sites to NRHP.

Allocate all new sites to management classes.

Prioritize multiple-site contextual nominations.

Identify sites for stabilization/protection.

Identify sites for public interpretation.

Task 5: Site Treatment

Treatment refers to the allocation of sites into the defined management classes and the implementation of management action to accomplish the goals of each allocation. Forest cultural resource specialists and the appropriate line officers are responsible for site management during the five year planning period.

Targets:

1988-1993	Manage sites in accordance with CRM Strategy.
	Prioritize sites for stabilization/protection.
	Prioritize sites for interpretation.
	Prioritize sites for long-term preservation.
	Provide annual report for SHPO and ACHP review.
	Prioritize public involvement with key groups.
	Emphasize contact with Tribal groups in area.
	Emphasize contact with professional community.
	Emphasize contact with avocational community.
	Hold annual In-Service CRM coordination meeting.
	Hold CRM Awareness sessions on each District.
	Develop electronic CRM data base system by 1990.
	Emphasize full use of DG system for CRM tasks.
	Maintain District CRM Atlas system.

Task 6: Monitoring and Quality Control

Monitoring refers to a scheduled process for follow-up and review of implementation efforts for the CRM Strategy. Monitoring is intended to measure accomplishment of targets, to regularly assess the quality and effectiveness of Cultural Resource Management on the Forest, and to provide program accountability for both internal and external reviewers.

Targets:

1988-1993	Field check 10% of newly recorded sites for consistency of specified management actions.
	Field check predictive models as necessary to validate assumptions and ensure proper application.
	Annually poll District Rangers for assessment of the effectiveness of CRM support, for identification of any management conflicts between CRM and other resource programs, and for ideas on CRM Program improvement.

Provide SHPOs with information on field monitoring efforts, model validation work, and with copies of all reports of investigation.

Hold annual public meeting with SHPOs to review and discuss implementation of CRM Strategy for given year. Invite appropriate professional groups, avocational societies, and Native American groups to attend annual meeting. Solicit public input for CRM Program improvement.

Make cultural resource information available to the public in a manner consistent with site security needs.

Present regular field reports and program updates at public meetings of groups such as Montana Archeological Society, North Dakota Archaeological Association, and the Council of South Dakota Archeologists.

Provide annual informational report to Advisory Council on Historic Preservation and the Regional Archeologist regarding compliance actions undertaken in accordance with this CRM Strategy.

Make compliance with Forest CRM Strategy a formal performance element for Cultural Resource Specialists and appropriate Line Officers. Review annually.

Include management actions scheduled in CRM Strategy in Annual Plan of Work for Forest.

IX. Summary and Discussion

The preceding sections of this paper assessed current Forest efforts in Cultural Resource Management, evaluated and selected a methodology for correcting program deficiencies, and developed a Forest-specific management strategy to be applied over a five year period. The Preservation Planning in Context format and a resource allocation system developed for the New Mexico National Forests were adapted to reflect Northern Plains culture history and specific Forest management needs.

The CRM Strategy proposed here will be formally reviewed by the State Historic Preservation Officers in Montana, North Dakota, and South Dakota, and by the Advisory Council on Historic Preservation. The Northern Region Staff Director for Recreation, Wilderness and Lands, the Regional Archeologist, and the Forest Supervisor will provide Forest Service review prior to approval and implementation.

The proposed CRM Strategy will meet the goals and objectives presented at the beginning of this paper. Implementation will: improve CRM Program balance, meet legal compliance requirements, facilitate an active management posture, improve program integration, improve program accountability, and improve program efficiency. It will ensure that management of the Forest's unique cultural resources for the five year planning period is governed by a rational design rather than by haphazard reaction to external demands and events.

The anticipated improvement is not without cost, and it is estimated that implementation will require a 30 to 35% increase in earmarked {074} cultural resource funds. It is predicated on a professional, journeyman level staff of three specialists. This core staff may be augmented by additional seasonal archeologists or archeological technicians as funding permits. It is our opinion that this cost is worthwhile in terms of improved resource management and reduced legal vulnerability. Many of the problems now being experienced by Forests in Region 1 and elsewhere may be attributed to past unrealistic levels of support for Cultural Resource Management.

Improved efficiency in several areas should be apparent by about the third year of the planning period as predictive models are developed and validated. Two of the first areas scheduled for modeling efforts are the Little Missouri National Grassland Districts and the Pine Parkland Districts. In both areas existing data are sufficient to start site distribution modeling. Both areas have a high density of prehistoric sites and high levels of Minerals, Range, and Timber development.

Validation of predictive models on these Districts by about the third year of implementation will allow us to adopt a much more streamlined approach to preproject inventories in consultation with the SHPOs. Stratification of Districts into high, moderate, and low site probability zones with concomitant levels of survey intensity, is both possible and desirable. Using such an approach, many projects may require no preproject inventory or may be examined much less intensively than under the current program.

In-Service analytical surveys in poorly understood areas of the Forest and in relation to validating predictive models will eliminate potentially troublesome blindspots. Areas such as the South Cave Hills, Blue Buttes, Chalk Buttes, and Absaroka-Beartooth Wilderness contain significant or highly sensitive cultural resources which can become "Instant Issues" with segments of the public as varied as the Energy Development industry, Native American advocacy groups, Wilderness advocates, and Historic Preservation advocates.

A systematic and modest level of planning-related inventory in such areas is far more cost effective in the long run, than waiting for an issue to explode. It is an unfortunate fact of life that cultural resource issues are sometimes used as a delaying tactic or foil in legal actions or appeals which have goals and agendas other than Historic Preservation.

Implementation of the proposed CRM Strategy will result in the gradual elimination of the current extensive backlog of unevaluated cultural sites. In the past it was common practice in the Northern Region and elsewhere to address possible adverse effects of various Forest undertakings on cultural sites by avoiding the site through project redesign. This approach worked in the short term because the site was left undisturbed and the modified pipeline, road, or timber sale went forward with little delay at a time when many Forests were understaffed in archeologists and historians. The problem now arising results from the fact that the avoided sites were rarely recorded in much detail or were rarely evaluated for actual significance in a legal sense.

A backlog of thousands of such sites now exists. Any subsequent development in the area of all of these sites is constrained by their presence until a formal evaluation is made and proper management action takes place. We may have avoided hundreds of ineligible and insignificant sites in the past which will still have to be re-evaluated in any future actions. This is neither efficient nor cost-effective and is a situation which must be addressed. The proposed CRM Strategy will reduce the backlog by 50% in five years and will ensure that this situation is not perpetuated by the addition of new sites to the backlog.

The proposed CRM Strategy will provide a greater measure of program accountability for both internal and external reviewers. Internally this approach allows supervisors to measure progress and accomplishment in Cultural Resources in an objective fashion. It facilitates fiscal analysis by clearly showing where appropriated 074 funds, as well as project support funds, are being spent. It facilitates preparation of an annual plan of work which can be demonstrated to be effective in moving towards clearly stated Forest goals. It allows the Forest Supervisor to track Forest actions in response to the recommendations of the Regional Forester's CRM Task Force, and to assess the overall effectiveness of the Forest Program.

Implementation of the proposed CRM Strategy will result in improved integration of cultural resource management activities with undertakings in other resource programs. This will occur because the rational management approach proposed here should help "demystify" Cultural Resources for line officers and resource staffs at the District and Forest level. Adoption of an orderly process for evaluation of site significance in relation to locally relevant criteria, and the use of an explicit allocation system for site management should facilitate understanding and good communications between cultural resource specialists and other land management personnel.

Development and validation of site distributional models and their eventual acceptance by review agencies will allow cultural resource specialists to recommend less conservative and more active management measures and tradeoffs to responsible line officers, than is now possible. The assured preservation of a representative sample of significant resources and the existence of clear guidelines for the management of other site classes within a multiple-use framework should facilitate good relations with the three State Historic Preservation Officers and with the Advisory Council on Historic Preservation. A clear statement of the conditions under which a site may be removed from further management consideration will streamline decision making at the District and Forest levels.

The lack of accomplishment in the formal nomination of Forest Service sites to the National Register of Historic Places has been of concern to many Historic Preservation advocates and to the SHPOs. It was identified as a major issue in the recent CRM lawsuit in Region 3, and in the findings of the Northern Region CRM Taskforce. The proposed CRM Strategy provides an orderly and systematic schedule for National Register nominations. Use of multiple property contextual nominations has the potential to efficiently place many hundreds of significant Forest resources on the Register. More importantly, nomination is identified as a Forest goal and a process is established to gradually accomplish it. This eliminates or minimizes an important area of legal liability for the Forest.

The CRM Strategy proposed here is a practical means of correcting the imbalances and deficiencies of the current CRM Program. It is feasible and affordable. It builds upon the strengths of the current program and our existing knowledge of Forest resources. It should result in a noticeable improvement in the quality of management and in program efficiency. Given the present visibility and volatility of cultural resource issues for Federal land managing agencies nationwide, it is also timely and necessary.

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Appendix A

List of Public Contacts

Public Contacts

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Appendix B

R1 CRM Task Force Report

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INTRODUCTION

Recently, the Regional Forester convened a special task force to review the state of Cultural Resource Management (CRM) programs throughout the Region. Our primary objectives were to provide the Regional Forester with (1) an accurate evaluation of our current level of management, (2) an estimate of the risk in Region 1 of litigation based on our compliance with Federal historic preservation laws and regulations, and (3) to formulate alternatives and recommendations to maintain an adequate CRM program.

The members of the CRM task force were selected to represent a cross section of R-1 line officers, specialists and staff officers who were knowledgeable and experienced in Forest Service cultural resource management. The group included: John Drake, RnW&L; John Inman, CNF Deputy Supervisor; Lloyd Reesman, Ranger, Hungry Horse District FNF; Milo McLeod, Zone Archeologist, LNF/BRT NF; Barbara Beck, Forest Archaeologist, DNF; Mike Beckes, RnWld. CRM Staff Officer, CNF; Dee Dee Green, Regional Archaeologist; and Jim McKie, Forest Archeologist, Nezperce NF. Pat Jackson, appeals coordinator for Region 3, actively participated on the first of our 2-day meetings.

In the past 5 years, the Forest Service has been involved in a growing number of expensive and time-consuming legal actions involving our management of historic and prehistoric sites, our management and treatment of Native American burials and sacred areas, and the degree to which our programs are in compliance with specific historic preservation laws. A complex lawsuit involving occupancy of Federal lands by Native Americans, human burials, and the overall quality of a FS CRM program to effectively manage cultural sites as a resource was settled in favor of the plaintiffs on the Black Hills NF. Other suits on the Coconino and Six Rivers NF's have been both costly and time consuming and have significantly impacted other resource programs. Most recently, a suit originating on the Jemez District of the Santa Fe NF resulted in a review and restructuring of the R-3 CRM program, direct, suit-related costs to the FS in excess of $500,000, a 2-year halt to timber harvest on the Santa Fe NF, and an out-of-court settlement, which doubled the R-3 CRM workload and associated costs. Similar actions appear likely in Regions 2 and 5.

Because of the increasing volatility and visibility of CRM-related litigation, the Chief's Office has instituted a Service-wide CRM program review. This review is aimed at evaluating our CRM programs, identifying areas where we are vulnerable to Jemez-style legal action and developing funding and direction to upgrade the quality of our programs to acceptable standards. Given this background of growing visibility and concern with Forest Service cultural resource management, the Regional Forester felt it was timely and necessary to get our own house in order.

The following sections represent our best collective effort to produce an accurate assessment of the current state of CRM in the Region and to develop a pragmatic set of alternatives and recommendations to correct identified deficiencies and significantly improve legal posture. We have made every effort to develop practical solutions which are capable of implementation given today's fiscal realities. Our approach was to develop minimum standards or qualitative benchmarks for key CRM program elements. Ensuring that our Forest programs meet these minimum standards will result in a decreased risk of litigation and a measurable but reasonable improvement of our management effectiveness.

CHARTER

The task force charter consisted of the following seven objectives:

1. Recommend qualitative standards for the cultural resource program: We interpreted this to mean to devise minimum standards which would be defensible in a court of law. While these standards would not meet the draft-revised FSM 2360, they would be achievable in a period of fiscal constraint. The task force utilized the settlement issues from the "Save the Jemez" lawsuit as the categories for standards. These standards were established during the first meeting and are explained under "Standards" in this document.

2. Determine where Region 1 is now in relation to these standards: In order to do this, each Forest Archaeologist in the group contacted at least two other Forests to determine whether their programs met the established standards. The archaeologists reported on the results during the second meeting.

3. Quantify the risk of not meeting the standards: This refers to the risk of both litigation and of damage to the resource. The risk of not meeting each standard was estimated qualitatively from high to low.

4. Define alternatives: The group defined three alternatives--to continue at the current level, to meet the minimum standards set up by the task force, and to meet the direction in the draft-revised FSM 2360. These alternatives are discussed below.

5. Develop funding options for the recommended alternatives: Options were discussed with the Regional Forester and are discussed below.

6. Develop recommendations: These recommendations are elaborated below.

7. Develop an action plan.

KEY POINTS FOR REGION 1 CRM PROGRAM

REGIONAL FORESTER'S PRESENTATION TO REGION 1 RANGER CONFERENCE

1. It is not acceptable that Forests have projects that are not in compliance.

2. Cultural resources need to be managed as resources themselves and not just to meet legal requirements.

3. An effective working relationship should be fostered and maintained with the State Historic Preservation Officers of Idaho, Montana, North Dakota and South Dakota.

4. All Forests are expected to build on what has been proposed by the task force.

5. The compliance process (i.e., survey and SHPO consultation) will be completed before an undertaking begins, realizing that if the legal requirements are not met, the project will not continue, even at the expense of outputs.

6. It is important that the Forest budget reflect the true cultural resource needs.

7. While the Region has made considerable progress in the past few years, we are still not where we need to be in terms of compliance.

8. By developing more credible programs in cultural resource management, Forests will be more effective in negotiating Memoranda of Agreement with State Historic Preservation Officers and, importantly, avoid the high costs of litigation.

9. It appears the Region 1's greatest risk is in the survey/consultation process, but we should realize that the Region is vulnerable in other CRM matters as well.

10. Funding is part of the solution. However, just as critical to success is increased Regional awareness, commitment and consistency.

STANDARD	SITUATION	RISK
I. SURVEY/INVENTORY -No new undertaking without formal consultation with SHPO (or PMOA). -Prioritize ongoing undertakings.	-Most "major" undertakings are surveyed. Consultation may or may not be completed. -Most "minor" undertakings are not receiving consultation. -Very little done on ongoing projects.	-Very high (resource damage and litigation).
II. EVALUATION -Achieve concensus determination of N.R. eligibility with SHPO. -Address backlog of unevaluated sites on a priority basis.	-Wide range of efforts towards this in Region. -Very little being done on this.	Litigation--moderate Resource damage-- -Moderate to prehistoric. -High for historic sites not evaluated.
III. PERFORMANCE STANDARDS a. Inventory-Develop systematic approach to sampling, get SHPO concurrence & formalize with MOA. b. Paraprofessionals--Valid mgmt. tool with adequate training, supervision, SHPO involvement. c. Monitoring--For plans to establish basis. Each unit develop monitoring strategy.	-No formal sampling strategies endorsed by an MOA with SHPO. Forests using sampling to varying degrees -Used by some Forests. Not accepted by some SHPO's. Paraprofessional programs are inconsistent within Region. -No systematic monitoring occurring, minimal monitoring. Not integrated with other project areas.	-Litigation-- -Moderate to high when sampling not endorsed. by SHPO. -Low when SHPO accepts program. -Monitoring--High. -Damage-- -Inv.=Low-medium. -Parapr.=Low -Monitoring=moderate-high.
IV. NATIONAL REGISTER NOMINATIONS Encourage nomination on an opportunity & priority basis.	-No Forests actively pursuing. A few sites are being nominated on an opportunity basis.	-Litigation--Low. Damage--Moderate.

STANDARD	SITUATION	RISK
V. SITE STABALIZATION		
-Develop prioritized list. -Develop MOA dealing with historic structures.	-Very little being done. -Region working on this now.	-Litigation=Low to moderate, "just right case" could be high. -Damage=Low to high depending on age, environment of site, etc.
VI. FOREST PLANNING		
-Supplement Forest plans to meet 219 planning regulations on priority basis.	-Most Forest plans are weak. -Planning process record needs to be supplemented.	-Litigation=High. -Damage=Low to high.
VII. ENHANCEMENT		
-Develop Regional priority list of sites for enhancement.	-No systematic efforts, very little being done.	-Litigation=Low. -Damage=Low.

STANDARDS

I. SURVEY/INVENTORY

- No new undertakings without formal consultation with SHPO, unless sanctioned by PMOA.
- "Undertaking" is defined in 36 CFR 800.
- Prioritize our consideration of ongoing undertakings on the basis of their potential to affect cultural resources.

PRESENT SITUATION IN REGION

1. Erratic understanding of the definition of "undertaking" by resource people and line officers.
2. Most major undertakings in Region have survey completed prior to initiation of the impacting activity, but consultation with SHPO may or may not be completed prior to beginning of impacting work.

   Examples:

   a. Large sales that have not sold and are later broken into smaller sales need cultural resource consideration even if no more fieldwork is necessary.

   b. Capital investment programs where funding availability and priorities change rapidly and can be on a constrained timetable as a result.

3. Most Forests are not getting survey/consultation done on undertakings perceived as having minor potential to impact to cultural resources. Individually, small projects may not be critical. However, each project not given cultural resource consideration is out of compliance and the cumulative effect of many small projects out of compliance is extensive with respect to both the potential for litigation and resource damage.
4. Maintenance/renovation of FS facilities is probably at about 10 percent of compliance. As many as 716 out of 2,154 FS buildings may qualify for the National Register.

RISK

1. Very high (for litigation and resource damage).

   a. Some major projects have proceeded without cultural resource consultation.

   b. We are especially vulnerable on new small sales/mineral activity/capital investment programs (operating plans, etc.).

   c. Major ongoing projects are rarely given cultural resource consideration.

II. EVALUATION

- Achieve consensus determination of National Register eligibility with the SHPO whenever possible.

- Address the backlog of sites on priority basis.

PRESENT SITUATION IN REGION

1. Backlog of sites - Very little is being done to evaluate the several thousand sites recorded but not evaluated. Another problem regarding backlog is the category of properties which may not be thought of as cultural resources; e.g., administrative properties, of which there are over 700 in this Region which are over 50 years old.

2. Consensus determinations - Forests vary in the degree to which they complete consensus determinations on newly recorded sites.

RISK

1. Of litigation - moderate.

2. Of resource damage:

   - To prehistoric sites - moderate.

   - To historic sites - high if site has not been evaluated.

III. PERFORMANCE STANDARDS

A. Inventory - need to meet inventory standards in 36 CFR 800.

1. Complete coverage - continue complete coverage of small acreage projects. This could include testing where appropriate.

2. Sampling:

- Work toward formal sample procedures endorsed by MOA.

- Develop systematic approach to development and implementation of sampling strategies in Region (build on R-3 and R-6 efforts).

- Existing sampling strategies should be professionally defensible, concurred with by SHPO on case-by-case basis.

B. Paraprofessionals

- Use paraprofessionals as management tool, provided paraprofessionals have at least minimum level of training and supervision. Be able to document the para's training and experience to help reassure SHPOs of para's abilities. Needs strong Regional commitment and consistency. Need for minimum level of supervision. Option for all Forests to use but not mandatory.

- If paras used independently, periodically check their performance and document in files (assure 074 dollars for paras is spent on CRM).

C. Monitoring

- Each unit develop monitoring strategy. Guidance to be given by Region.

- Forest Plan to establish a basis for monitoring of cultural resources.

- Integrate cultural resource monitoring into other programs.

PRESENT SITUATION

1. Inventory

- None of the Forests has a formal sampling strategy endorsed by an MOA with SHPO. Forests are doing sample surveying to varying degrees on their own. Sampling for facilities inventory is not appropriate.

- Draft-revised FSM 2360 may conflict with use of sampling.

Those small projects receiving survey are probably being adequately addressed since they usually receive 100-percent survey. The greatest potential payoffs as well as risks are on large projects.

2. Paraprofessionals

- Some Forests have paraprofessional programs; others do not. Montana and North Dakota have not yet accepted use of paraprofessionals for fieldwork.

- Paraprofessional programs and use are very inconsistent across the Region.

3. Monitoring - No systematic monitoring of sites and projects. Monitoring occurring on a very minimal basis. Monitoring is not well integrated with administration of other projects.

RISK

1. Inventory

- Risk of litigation - moderate to high when not formally endorsed by SHPO. Lower when SHPO knows what we are doing even if it is not formalized.

- Risk of resource damage - moderate.

2. Paraprofessional

- Risk of litigation - low where state accepts program given proper training and supervision, high if not supported by SHPO.

- Risk of resource damage - moderate.

3. Monitoring

- Risk of litigation - moderate to high at present due to lack of systematic process for monitoring sites and projects.

- Risk of resource damage - high for Forest Service administrative sites; in general, moderate to high due to lack of monitoring during project activity (by Forest Archaeologist or some other "aware" Forest Service individual).

IV. NATIONAL REGISTER NOMINATIONS

Encourage nomination on an opportunistic and priority basis using groups/classes of site types where possible.

PRESENT SITUATION

The Region has 50 sites listed on the National Register. No Forests in the Region have a systematic program to nominate sites to the National Register. A few sites are being nominated on an opportunity basis.

RISK

- Risk of litigation - low.

- Risk of resource damage - moderate.

V. SITE STABILIZATION

- Develop a prioritized list of sites for stabilization.

- Develop a PMOA dealing with types of historical structures.

PRESENT SITUATION IN REGION

- Very little being done in the Region.

RISK

- Risk of litigation - low to moderate. The risk is lower for prehistoric sites and moderate for historic sites in general but could be high in "the right case," (e.g., significant historic mining town).

- Risk of resource damage - low to high depending on age of structures, environmental conditions, etc.

VI. FOREST PLANNING

Supplement Forest plans as part of the planning process record to meet 36 CFR 219 planning regulations on a priority basis.

PRESENT SITUATION IN REGION

- Most Forest plans are weak in this area and planning process record needs to be supplemented.

RISK

- Risk of litigation - high risk of appeal of Forest Plan because of not meeting standards in regulations.

- Risk of resource damage - low to high depending on Forest awareness and program needs.

VII. ENHANCEMENT

Develop a Regional priority list for enhancement and implement on a priority basis as dollars become available.

PRESENT SITUATION IN REGION

- Very limited amount of enhancement being done in Region, nothing systematic.

RISK

- Risk of litigation - low.

- Risk of resource damage - low (enhancement to facilities may mitigate damage to some facilities.

TASK FORCE RECOMMENDATIONS

These recommendations are not ranked or listed on any priority basis:

1. The Region should adopt the operational floor standards (Alternative 2) identified by this task force as defining the minimal acceptable cultural resource program.

2. The Regional Forester should express his philosophy and concerns regarding the cultural resource program to Forest Supervisors and District Rangers.

3. Beyond the minimal operational floor, individual Forests should identify their critical cultural resource emphasis areas. For one Forest, this might be nonproject-related survey; another Forest may decide its priority is to enhance one or more sites.

4. Utilize any and all legitimate funding options (refer to funding option list appended). If funding to carry out the cultural resource compliance work is not available or cannot be covered by the function which originates the project, the project will not be carried out. Outputs may be affected by this.

5. Continue and encourage coordination, cooperation and sharing with other agencies and states involved in cultural resource management on lands near or contiguous to Forest lands.

6. Forests and the Regional Office should strive to maintain the best possible working relationships with their appropriate State Historic Preservation Officers (SHPOs).

7. The Region as a whole should attempt to better integrate cultural resources with other resource programs. Some examples of ways this could be accomplished would be through interdisciplinary monitoring of projects and sites and planning efforts.

8. The Regional Office will provide direction and coordination in the following areas:

- Achieve more consistency in the paraprofessional programs.
- Actively pursue establishing Regional MOAs with State Historic Preservation Officers.
- Work towards identification and formalizing of sampling procedures.
- Research and recommend an implementable project-compliance tracking system.
- Encourage line and staff sensitivity and awareness to cultural resource concerns. Check into the possibility of developing a video for this purpose.
- Develop standardized guidelines for a site and project-monitoring plan to be implemented by Forests.
- Monitor progress of Forests with respect to standards identified by the task group as the operational floor.

STANDARDS

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- Prioritize our consideration of ongoing undertakings on the basis of their potential to affect cultural resources.

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- Risk of resource damage - moderate.

2. Paraprofessional

- Risk of litigation - low where state accepts program given proper training and supervision, high if not supported by SHPO.

- Risk of resource damage - moderate.

3. Monitoring

- Risk of litigation - moderate to high at present due to lack of systematic process for monitoring sites and projects.

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The Region has 50 sites listed on the National Register. No Forests in the Region have a systematic program to nominate sites to the National Register. A few sites are being nominated on an opportunity basis.

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- Develop a prioritized list of sites for stabilization.

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VI. FOREST PLANNING

Supplement Forest plans as part of the planning process record to meet 36 CFR 219 planning regulations on a priority basis.

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- Most Forest plans are weak in this area and planning process record needs to be supplemented.

RISK

- Risk of litigation - high risk of appeal of Forest Plan because of not meeting standards in regulations.
- Risk of resource damage - low to high depending on Forest awareness and program needs.

VII. ENHANCEMENT

Develop a Regional priority list for enhancement and implement on a priority basis as dollars become available.

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- Very limited amount of enhancement being done in Region, nothing systematic.

RISK

- Risk of litigation - low.

- Risk of resource damage - low (enhancement to facilities may mitigate damage to some facilities.

ALTERNATIVES

1. Continue at current or reduced level with budget reductions.

   Impacts

   - Increased risk of litigation and damage to resource.
   - Deteriorating relations with SHPO and ACHP.
   - Will not meet new draft manual standards (or current).
   - Would not be in legal compliance.
   - Budget requirements would be same or less ($683,900).

2. Meet operational floor as defined by Task Force to reduce risk of litigation.

   Impacts

   - Defensible program.
   - Substantially reduces risk of litigation and resource damage--improves cost-effectiveness.
   - Relatively minimal program from budget and additional need standpoint (+ 30 percent)($888,000).
   - Improves relationship with SHPO.
   - Increased awareness and sensitivity to CR (will increase costs for training, etc.).
   - Allows us to start managing CR as a resource rather than just reacting.
   - Does not fully meet draft manual requirements.
   - Some possibilities for streamlining process, e.g., MOU's.

3. Meet Manual Direction.

   - Evaluate all sites, including backlog.
   - Institute systematic monitoring program of sites and projects.
   - Inventory to improve data base for management.
   - Moderate level of enhancement, protection, etc.

Impacts

- Would require an estimated 50-70 percent increase in budget from current levels ($1,093,000).
- Allows modest resource management program.
- Meets legal and manual requirements.
- Minimizes risk of litigation.
- Significantly improve relations with SHPO.
- Greater potential for streamlining process--MOU's sampling, etc.
- Increased awareness and committment to CR program (training, etc.).

FUNDING OPTIONS

1. Request additional funding from the Washington Office.

   - New money

   - Give emphasis through program support--even at constrained budget levels.

2. Reprogram from existing funds, e.g., 070, 031. Done at expense of existing programs.

3. Finance from benefitting function (project initiating action). Will increase unit costs and may reduce outputs.

4. Require permittee/purchaser to do CR work associated with project. Over site by Forest Service. Being done in minerals, range, cost-share. Logistics may be difficult with timber--except for monitoring.

5. Assume 074 funds go to CR work.

6. Choose most cost-effective and least risk projects.

7. Special funding for priority project. Must be very selective.

Summary and Conclusions

The purposes of the task force were several: (1) To determine the current situation of the CRM (Cultural Resource Management) program in Region 1 with respect to legal compliance and integration of the program into overall Forest management, and (2) to offer recommendations on ways to improve both the integration and compliance levels of the program. For reasons explained in the "Introduction," the issues of compliance and litigation are currently of real concern to the Region. In addition, there is the need to improve our management of the cultural resource as a resource unto itself. With these in mind, the task force developed what is considered to be a workable and realistic approach to upgrade our CRM program. This approach is based on increased funding, commitment and integration of the cultural resource program.

The task force recommended implementing Alternative 2 during F.Y. 1987 and working toward achieving Alternative 3 soon thereafter. These recommendations have been endorsed by the Regional Forester.

DEFINITIONS

ACHP	Advisory Council on Historic Preservation
MOA (or PMOA)	Programmatic Memorandum of Agreement
NRHP	National Register of Historic Places
SHPO	State Historic Preservation Officer

Backlog — Those cultural sites previously recorded, or sites known but not yet formally recorded (e.g., Forest Service historic administrative facilities) that have not been evaluated for significance against criteria for listing on the National Register or Historic Places.

Compliance Procedures — Forest Service procedures to implement requirements of 36 CFR 800 and Section 106 of the National Historic Preservation Act (FSM 2361.8).

Enhancement — Interpret cultural resources for public use and benefit.

Evaluation — The process of determining the scientific, cultural and historical significance of a cultural resource. Significance is determined relative to National Register criteria.

Operational Floor — The minimum acceptable functioning level for a cultural resource program in Region 1 as identified by the task force for the present time.

Significance — Attributes or characteristics of a property which qualify as eligible for listing in the National Register.

Stabilization — Use of measures to minimize the effects of harmful natural deterioration.

Undertaking — A Forest Service or Forest Service-assisted action, activity or program, or the approval, sanction, assistance, license, permit or support of any Federal or non-Federal action, activity or program (FSM 2361.82).

- Major undertaking is an undertaking that has significant ground disturbance. Examples of this would be large timber sales, large mineral operations, land exchanges and roads.
- Minor undertaking is one without significant ground disturbance. Examples of projects in this category would be continuing maintenance of historic facilities, small timber sales, small mineral operations, trail reconstruction and fence reconstruction.

Appendix C

36 CFR 800 Regulations

36 CFR PART 800: PROTECTION OF HISTORIC PROPERTIES

The italicized marginal annotations are intended to aid the reader in locating regulatory topics. They are not a part of the formal regulations.

The text immediately below was published in the Federal Register *on September 2, 1986 (51 FR 31115), as 36 CFR Part 800, "Protection of Historic Properties." These regulations govern the Section 106 review process established by the National Historic Preservation Act of 1966, as amended.*

SUBPART A—BACKGROUND AND POLICY

800.1 Authorities, purposes, and participants.

What §106 requires of Federal agencies

(a) Authorities. Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into acount the effects of the agency's undertakings on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking and, prior to approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the Section 106 process.

What §110(f) requires of Federal agencies

Accommodation of historic preservation concerns and needs of Federal undertakings

(b) Purposes of the Section 106 process. The Council seeks through the Section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties.

Early integration of §106 into project planning

Integration of the Section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the Section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special Section 106 procedures suited to the agency's needs.

§106 participants

(c) Participants in the Section 106 process.

Consulting parties

(1) *Consulting parties.* Consulting parties are the primary participants in the Section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

Federal agency's general responsibilities

(i) *Agency Official.* The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with Section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for Section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the Section 106 process as appropriate in the manner set forth below.

SHPO's general responsibilities

(ii) *State Historic Preservation Officer.* The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the Section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the Section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in Section 800.7 of these regulations.

Council's general responsibilities

(iii) *Council.* The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the regulations is set forth in a separate, internal delegation of authority.

Interested persons' participation

(2) *Interested persons.* Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of Section 106, they may invite that person to become a consulting party. Interested persons may include:

Local governments' participation

(i) *Local governments.* Local governments are encouraged to take an active role in the Section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for Section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no

such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to Section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

Federal applicants' participation

(ii) *Applicants for Federal assistance, permits, and licenses.* When the undertaking subject to review under Section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the Section 106 process in the manner prescribed in these regulations.

Indian tribes' participation

(iii) *Indian tribes.* The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands, provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

Public participation

(iv) *The public.* The Council values the views of the public on historic preservation questions and encourages maximum public participation in the Section 106 process. The Agency Official, in the manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the Section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adequately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decisionmaking. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the Section 106 process.

Definitions

800.2 Definitions.

"Act"

(a) "Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§ 470-470w-6.

"Agency Official"

(b) "Agency Official" means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with Section 106 and Section 110(f) in accordance with law.

"Area of potential effects"

(c) "Area of potential effects" means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

"Council"

(d) "Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

"Historic property"

(e) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

"Indian lands"

(f) "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.

"Indian tribe"

(g) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. §1601, *et seq.*

"Interested person"

(h) "Interested person" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

"Local government"

(i) "Local government" means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

"National Historic Landmark"

(j) "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

"National Register"

(k) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.

"National Register Criteria"

(l) "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

"Secretary"

(m) "Secretary" means the Secretary of the Interior.

"SHPO"

(n) "State Historic Preservation Officer" means the official appointed or designated pursuant to Section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

"Undertaking"

(o) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.

How the §106 process works

SUBPART B—THE SECTION 106 PROCESS

800.3 General.

Scope of the regulations; alternative methods of meeting §106 requirements

(a) Scope. The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the Section 106 process. Alternative methods of meeting Section 106 obligations are found in Section 800.7, governing review of untertakings in States that have entered into agreements with the Council for Section 106 purposes, and Section 800.13, governing Programmatic Agreements with Federal agencies that pertain to specific programs or activities. Under each of these methods, the Council encourages Federal agencies to reach agreement on developing alternatives or measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.

Procedural flexibility

(b) Flexible application. The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner reflecting differing program requirements, as long as the purposes of Section 106 of the Act and these regulations are met.

Timing of the §106 process

(c) Timing. Section 106 requires the Agency Official to complete the Section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit. The Council does not interpret this language to bar an Agency Official from expending funds on or authorizing nondestructive planning activities preparatory to an undertaking before complying with Section 106, or to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the Section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the Section 106 process that is consistent with the planning and approval schedule for the undertaking.

Allowance for nondestructive planning before the §106 process is completed

Steps of the §106 process

800.4 Identifying historic properties.

Agency's determination of what information will be needed to complete the §106 process

(a) Assessing information needs.

(1) Following a determination by the Agency Official that a proposed project, activity, or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall:

(i) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effects;

(ii) Request the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected; and

(iii) Seek information in accordance with agency planning processes from local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area.

(2) Based on this assessment, the Agency Official should determine any need for further actions, such as field surveys and predictive modeling, to identify historic properties.

Agency's location of historic properties in the project area

(b) Locating historic properties. In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties should follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and agency programs to meet the requirements of Section 110(a)(2) of the Act.

Agency's evaluation of whether properties found are "historic"

(c) Evaluating historical significance.

(1) In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible.

Agency/SHPO agreement about National Register eligibility of properties found

(2) If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for Section 106 purposes.

(3) If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for Section 106 purposes.

Disagreement about National Register eligibility of properties found

(4) If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination from the Secretary of the Interior pursuant to applicable National Park Service regulations.

(5) If the State Historic Preservation Officer does not provide views, then the State Historic Preservation Officer is presumed to agree with the Agency Official's determination for the purpose of this subsection.

Agency's actions if no historic properties are found

(d) When no historic properties are found. If the Agency Official determines in accordance with Sections 800.4(a)-(c) that there are no historic properties that may be affected by the undertaking, the Agency Official shall provide documentation of this finding to the State Historic Preservation Officer. The Agency Official should notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and make the documentation available to the public. In these circumstances, the Agency Official is not required to take further steps in the Section 106 process.

Agency's actions if historic properties are found

(e) When historic properties are found. If there are historic properties that the undertaking may affect, the Agency Official shall assess the effects in accordance with Section 800.5.

Agency's assessment of project effects on historic properties found

800.5 Assessing effects.

Agency's use of Criteria of Effect

(a) Applying the Criteria of Effect. In consultation with the State Historic Preservation Officer, the Agency Official shall apply the Criteria of Effect (Section 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.

Agency's actions if no effect is found

(b) When no effect is found. If the Agency Official finds the undertaking will have no effect on historic properties, the Agency Official shall notify the State Historic Preservation Officer and interested persons who have made their concerns known to the Agency Official and document the finding, which shall be available for public inspection. Unless the State Historic Preservation Officer objects within 15 days of receiving such notice, the Agency Official is not required to take any further steps in the Section 106 process. If the State Historic Preservation Officer files a timely objection, then the procedures described in Section 800.5(c) are followed.

Agency's use of Criteria of Adverse Effect

(c) When an effect is found. If an effect on historic properties is found, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect (Section 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

Agency's actions if effects are not adverse

(d) When the effect is not considered adverse.

(1) If the Agency Official finds the effect is not adverse, the Agency Official shall:

(i) Obtain the State Historic Preservation Officer's concurrence with the finding and notify and submit to the Council summary documentation, which shall be available for public inspection; or

(ii) Submit the finding with necessary documentation (Section 800.8(a)) to the Council for a 30-day review period and notify the State Historic Preservation Officer.

(2) If the Council does not object to the finding of the Agency Official within 30 days of receipt of notice, or if the Council objects but proposes changes that the Agency Official accepts, the Agency Official is not required to take any further steps in the Section 106 process other than to comply with any agreement with the State Historic Preservation Officer or Council concerning the undertaking. If the Council objects and the Agency Official does not agree with changes proposed by the Council, then the effect shall be considered as adverse.

Agency's actions if effects are adverse

(e) When the effect is adverse. If an adverse effect on historic properties is found, the Agency Official shall notify the Council and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Council to participate. The Council may participate in the consultation without such a request.

Consultation to avoid or reduce adverse effects; Council participation is optional

Invitation to interested persons to join in consultation

(1) *Involving interested persons.* Interested persons shall be invited to participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(ii) The representative of an Indian tribe in accordance with Section 800.1(c)(2)(iii);

(iii) Applicants for or holders of grants, permits, or licenses, and owners of affected lands: and

(iv) Other interested persons when jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

Documentation needed for consultation

(2) *Documentation.* The Agency Official shall provide each of the consulting parties with the documentation set forth in Section 800.8(b) and such other documentation as may be developed in the course of consultation.

Public notification about consultation

(3) *Informing the public.* The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing agency public involvement procedures to provide this opportunity. The Agency Official, State Historic Preservation Officer, or the Council may meet with interested members of the public or conduct a public information meeting for this purpose.

Memorandum of Agreement (MOA) reached through consultation; MOA signatories

(4) *Agreement.* If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has not participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with Section 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

Amendments to MOA's

(5) *Amendments.* The Agency Official, the State Historic Preservation Officer, and the Council, if it was a signatory to the original agreement, may subsequently agree to an amendment to the Memorandum of Agreement. When the Council is not a party to the Memorandum of Agreement, or the Agency Official and the State Historic Preservation Officer cannot agree on changes to the Memorandum of Agreement, the proposed changes shall be submitted to the Council for comment in accordance with Section 800.6.

Ending consultation

(6) *Ending consultation.* The Council encourages Agency Officials and State Historic Preservation Officers to utilize the consultation process to the fullest extent practicable. After initiating consultation to seek ways to reduce or avoid effects on historic properties, the State Historic Preservation Officer, the Agency Official, or the Council, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The Agency Official shall then request the Council's comments in accordance with Section 800.6(b) and notify all other consulting parties of its requests.

800.6 Affording the Council an opportunity to comment.

Council review of an MOA

(a) Review of a Memorandum of Agreement.

Documentation for MOA review

(1) When an Agency Official submits a Memorandum of Agreement accompanied by the documentation specified in Section 800.8(b) and (c), the Council shall have 30 days from receipt to review it. Before this review period ends, the Council shall:

(i) Accept the Memorandum of Agreement, which concludes the Section 106 process, and inform all consulting parties; or

(ii) Advise the Agency Official of changes to the Memorandum of Agreement that would make it acceptable; subsequent agreement by the Agency Official, the State Historic Preservation Officer, and the Council concludes the Section 106 process; or

(iii) Decide to comment on the undertaking, in which case the Council shall provide its comments within 60 days of receiving the Agency Official's submission, unless the Agency Official agrees otherwise.

(2) If the Agency Official, the State Historic Preservation Officer, and the Council do not reach agreement in accordance with Section 800.6(a)(1)(ii), the Agency Official shall notify the Council, which shall provide its comments within 30 days of receipt of notice.

Council comment, absent an MOA

(b) Comment when there is no agreement.

Documentation for Council comment, absent an MOA

(1) When no Memorandum of Agreement is submitted, the Agency Official shall request Council comment and provide the documentation specified in Section 800.8(d). When requested by the Agency Official, the Council shall provide its comments within 60 days of receipt of the Agency Official's request and the specified documentation.

Additional information, onsite inspection, public meeting, absent an MOA

(2) The Agency Official shall make a good faith effort to provide reasonably available additional information concerning the undertaking and shall assist the Council in arranging an onsite inspection and public meeting when requested by the Council.

How the Council provides comments, absent an MOA

(3) The Council shall provide its comments to the head of the agency requesting comment. Copies shall be provided to the State Historic Preservation Officer, interested persons, and others as appropriate.

Agency's response to Council comment

(c) Response to Council comment.

(1) When a Memorandum of Agreement becomes final in accordance with Section 800.6(a)(1)(i) or (ii), the Agency Official shall carry out the undertaking in accordance with the terms of the agreement. This evidences fulfillment of the agency's Section 106 responsibilities. Failure to carry out the terms of a Memorandum of Agreement requires the Agency Official to resubmit the undertaking to the Council for comment in accordance with Section 800.6.

Failure to carry out terms of an MOA

Agency's consideration of Council comment

(2) When the Council has commented pursuant to Section 800.6(b), the Agency Official shall consider the Council's comments in reaching a final decision on the proposed undertaking. The Agency Official shall report the decision to the Council, and if possible, should do so prior to initiating the undertaking.

Agency actions that preempt reasonable opportunity for Council comment

(d) Foreclosure of the Council's opportunity to comment.

(1) The Council may advise an Agency Official that it considers the agency has not provided the Council a reasonable opportunity to comment. The decision to so advise the Agency Official will be reached by a majority vote of the Council or by a majority vote of a panel consisting of three or more Council members with the concurrence of the Chairman.

(2) The Agency Official will be given notice and a reasonable opportunity to respond prior to a proposed Council determination that the agency has foreclosed the Council's opportunity to comment.

Public objection to agency determinations about whether historic properties or effects are present

(e) Public requests to the Council.

(1) When requested by any person, the Council shall consider an Agency Official's finding under Sections 800.4(b), 800.4(c), 800.4(d), or 800.5(b) and, within 30 days of receipt of the request, advise the Agency Official, the State Historic Preservation Officer, and the person making the request of its views of the Agency Official's finding.

(2) In light of the Council views, the Agency Official should reconsider the finding. However, an inquiry to the Council will not suspend action on an undertaking.

(3) When the finding concerns the eligibility of a property for the National Register, the Council shall refer the matter to the Secretary.

Substitute review processes developed by States for §106 review

800.7 Agreements with States for Section 106 reviews.

(a) Establishment of State agreements.

(1) Any State Historic Preservation Officer may enter into an agreement with the Council to substitute a State review process for the procedures set forth in these regulations, provided that:

(i) The State historic preservation program has been approved by the Secretary pursuant to Section 101(b)(1) of the Act; and

(ii) The Council, after analysis of the State's review process and consideration of the views of Federal and State agencies, local governments, Indian tribes, and the public, determines that the State review process is at least as effective as, and no more burdensome than, the procedures set forth in these regulations in meeting the requirements of Section 106.

Council review of a proposed substitute State review process

(2) The Council, in analyzing a State's review process pursuant to Section 800.7(a)(1)(ii), shall:

(i) Review relevant State laws, Executive Orders, internal directives, standards, and guidelines;

(ii) Review the organization of the State's review process;

(iii) Solicit and consider the comments of Federal and State agencies, local governments, Indian tribes, and the public;

(iv) Review the results of program reviews carried out by the Secretary; and

(v) Review the record of State participation in the Section 106 process.

(3) The Council will enter into an agreement with a State under this section only upon determining, at minimum, that the State has a demonstrated record of performance in the Section 106 process and the capability to administer a comparable process at the State level.

SHPO/Council consultation about a proposed substitute State review process

(4) A State agreement shall be developed through consultation between the State Historic Preservation Officer and the Council and concurred in by the Secretary before submission to the Council for approval. The Council may invite affected Federal and State agencies, local governments, Indian tribes, and other interested persons to participate in this consultation. The agreement shall:

(i) Specify the historic preservation review process employed in the State, showing that this process is at least as effective as, and no more burdensome than, that set forth in these regulations;

(ii) Establish special provisions for participation of local governments or Indian tribes in the review of undertakings falling within their jurisdiction, when appropriate;

(iii) Establish procedures for public participation in the State review process;

(iv) Provide for Council review of actions taken under its terms, and for appeal of such actions to the Council; and

(v) Be certified by the Secretary as consistent with the Secretary's "Standards and Guidelines for Archeology and Historic Preservation."

(5) Upon concluding a State agreement, the Council shall publish notice of its execution in the *Federal Register* and make copies of the State agreement available to all Federal agencies.

Agency's use of substitute State review processes

(b) Review of undertakings when a State agreement is in effect.

(1) When a State agreement under Section 800.7(a) is in effect, an Agency Official may elect to comply with the State review process in lieu of compliance with these regulations.

(2) At any time during review of an undertaking under a State agreement, an Agency Official may terminate such review and comply instead with Sections 800.4 through 800.6 of these regulations.

(3) At any time during review of an undertaking under a State agreement, the Council may participate. Participants are encouraged to draw upon the Council's expertise as appropriate.

Monitoring or terminating substitute State review processes

(c) Monitoring and termination of State agreements.

(1) The Council shall monitor activities carried out under State agreements, in coordination with the Secretary of the Interior's approval of State programs under Section 101(b)(1) of the Act. The Council may request that the Secretary monitor such activities on its behalf.

(2) The Council may terminate a State agreement after consultation with the State Historic Preservation Officer and the Secretary.

(3) An agreement may be terminated by the State Historic Preservation Officer.

(4) When a State agreement is terminated pursuant to Section 800.7(c)(2) and (3), such termination shall have no effect on undertakings for which review under the agreement was complete or in progress at the time the termination occurred.

800.8 Documentation requirements.

Documentation for finding of no adverse effect

(a) Finding of no adverse effect. The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the Criteria of Adverse Effect were found inapplicable;

(5) The views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

Documentation required for consultation

(b) Finding of adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and

(4) A description of the undertaking's effects on historic properties.

Documentation required for submitting a signed MOA for Council review

(c) Memorandum of Agreement. When a memorandum is submitted for review in accordance with Section 800.6(a)(1), the documentation, in addition to that specified in Section 800.8(b), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to deal with the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.

Documentation required for requesting written Council comment, absent an MOA

(d) Requests for comment when there is no agreement. The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is as follows:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes for dealing with the undertaking's effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons;

(9) The planning and approval schedule for the undertaking; and

(10) Copies or summaries of any written views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

800.9 Criteria of Effect and Adverse Effect.

Criteria of Effect

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of the property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

Criteria of Adverse Effect

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

Exceptions to the Criteria of Adverse Effect

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings"; or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

(ii) Develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and the comments from the State Historic Preservation Officer and the Council pursuant to Section 800.11(c); or

(iii) If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act, 16 U.S.C. §§ 469 (a)-(c), comply with that Act and implementing regulations instead of these regulations.

(3) Section 106 and these regulations do not require the Agency Official to stop work on the undertaking. However, depending on the nature of the property and the undertaking's apparent effects on it, the Agency Official should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

Council comments when historic properties are discovered after a project has begun

(c) Council Comments.

(1) When comments are requested pursuant to Section 800.11(b)(2)(i), the Council will provide its comments in a time consistent with the Agency Official's schedule, regardless of longer time periods allowed by these regulations for Council review.

(2) When an Agency Offical elects to comply with Section 800.11(b)(2)(ii), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to take effects into account, and request the Council's comments. The Council shall provide interim comments to the Agency Official within 48 hours of the request and final comments to the Agency Official within 30 days of the request.

(3) When an Agency Official complies with Section 800.11(b)(2)(iii), the Agency Official shall provide the State Historic Preservation Officer an opportunity to comment on the work undertaken and provide the Council with a report on the work after it is undertaken.

Agency actions to determine National Register eligibility of newly discovered properties

(d) Other considerations.

(1) When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of Section 106.

Discovery of properties on Indian lands

(2) When a discovery occurs and compliance with this section is necessary on lands under the jurisdiction of an Indian tribe, the Agency Official shall consult with the Indian tribe during implementation of this section's requirements.

Waiver of §106 requirements during disasters or declared emergencies

800.12 Emergency undertakings.

(a) When a Federal agency head proposes an emergency action and elects to waive historic preservation responsibilities in accordance with 36 CFR § 78.2, the Agency Official may comply with the requirements of 36 CFR Part 78 in lieu of these regulations. An Agency Official should develop plans for taking historic properties into account during emergency operations. At the request of the Agency Official, the Council will assist in the development of such plans.

(b) When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster declared by the President or the appropriate Governor, and Section 800.12(a) does not apply, the Agency Official may satisfy Section 106 by notifying the Council and the appropriate State Historic Preservation Officer of the emergency undertaking and affording them an opportunity to comment within seven days if the Agency Official considers that circumstances permit.

(c) For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, Section 800.12(b) also applies to an imminent threat to public health or safety as a result of natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or the State Historic Preservation Officer objects, the Agency Official shall comply with Sections 800.4 through 800.6.

30-day timeframe for §106 waiver in disaster situations

(d) This section does not apply to undertakings that will not be implemented within 30 days after the disaster or emergency. Such undertakings shall be reviewed in accordance with Sections 800.4 through 800.6.

Agency's use of Programmatic Agreements

800.13 Programmatic Agreements.

(a) Application. An Agency Official may elect to fulfill an agency's Section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments, through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

Examples of projects or programs suitable for Programmatic Agreements

(1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;

(2) When effects on historic properties cannot be fully determined prior to approval;

(3) When non-Federal parties are delegated major decisionmaking responsibilities;

(4) That involve development of regional or land-management plans; or

(5) That involve routine management activities at Federal installations.

Agency/Council consultation to reach a Programmatic Agreement

(b) **Consultation process.** The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

Public involvement in Programmatic Agreement consultation

(c) **Public involvement.** The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

Signatories of a Programmatic Agreement

(d) **Execution of the Programmatic Agreement.** After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

Effect of a Programmatic Agreement

(e) **Effect of the Programmatic Agreement.** An approved Programmatic Agreement satisfies the Agency's Section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

Public notification of a Programmatic Agreement

(f) **Notice.** The Council shall publish notice of an approved Programmatic Agreement in the *Federal Register* and make copies readily available to the public.

Failure to carry out terms of a Programmatic Agreement

(g) **Failure to carry out a Programmatic Agreement.** If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with Sections 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

Coordination of §106 with other authorities

800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

Coordination with NEPA environmental studies

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

Multipurpose determinations and agreements

(b) Designing determinations and agreements to satisfy the terms not only of Section 106 and these regulations, but also the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, Section 110 of the National Historic Preservation Act, and Section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

Multipurpose studies and surveys

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

Coordinated public involvement

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

Agency's use of counterpart regulations to substitute for 36 CFR Part 800

800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the Section 106 process. When concurred in by the Council, such counterpart regulations shall stand in place of these regulations for the purposes of the agency's compliance with Section 106.

Appendix D

North Dakota Memorandum of Agreement

PROGRAMMATIC MEMORANDUM OF AGREEMENT BETWEEN THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE USDA FOREST SERVICE, CUSTER NATIONAL FOREST, AND THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER REGARDING MANAGEMENT OF PREHISTORIC PROPERTIES ON THE LITTLE MISSOURI NATIONAL GRASSLANDS

WHEREAS, the USDA Forest Service, Custer National Forest (Forest Service) has determined that its routine management activities on the Little Missouri National Grasslands will affect properties included in or eligible for inclusion in the National Register of Historic Places and has requested the comments of the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470[f]) and its implementing regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800),

WHEREAS, the Chairman of the Council ratified a Memorandum of Agreement for oil and gas operations on the Little Missouri National Grasslands with the Northern Region of the Forest Service and the North Dakota State Historic Preservation Officer (SHPO) on December 8, 1981; and,

WHEREAS, the consulting parties have determined the Agreement ratified on December 8, 1981, should be changed;

NOW, THEREFORE, the Forest Service, the North Dakota (SHPO), and the Council agree that the Forest Service's management of historic properties (historic, archeological, architectural, and cultural) on the Grasslands shall be implemented in accordance with the following stipulations which replace the Agreement ratified on December 8, 1981.

STIPULATIONS

The Forest Service will ensure that the following measures are carried out:

I. SCOPE OF THE PROGRAMMATIC MEMORANDUM OF AGREEMENT (PMOA)

A. This PMOA is aimed at a narrow range of shallow, surface visible, archeological sites in the highly eroded Little Missouri National Grasslands. The sites are predominantly the result of short duration, habitation by small prehistoric groups and are characterized by scatters of lithic material, lithic tools, bone fragments, and, rarely, pottery fragments. While sometimes very productive in terms of information content, this class of sites rarely contains cultural deposits deeper than 12" below the surface. Hearth features are common, but structural

remains other than simple stone circles or "tipi rings" are almost nonexistent.

B. Other classes of archeological properties, historic, architectural, cultural, and historical archeological historic properties are covered by the terms of the PMOA only in stipulation III and stipulation IV. If these types of historic properties will be affected by an undertaking, the Forest Service will obtain the Council's comments through the regulations (36 CFR Part 800.4 et. seq.).

II. QUALIFICATIONS OF SUPERVISORS

All archeological survey, evaluation, and mitigation work on the Grasslands will be directly supervised by a person(s) meeting the qualifications for a prehistoric archeologist contained at Part 296.8(a) in the Department of Agriculture's regulations "Archaeological Resources Protection Act of 1979: Final Uniform Regulations" (36 CFR Part 296).

III. IDENTIFICATION OF HISTORIC PROPERTIES

1. Because of demonstrated high site density and the rapid pace of energy development in the Grasslands, the Forest Service and North Dakota SHPO have determined that preproject inventories will normally be required. Field inventories will meet Forest Service/Bureau of Land Management Class III survey intensity standards. To promote standardization in consideration of areas of potential environmental impact for well pad inventories, a 10 acre interagency norm has been established. Larger or smaller areas of effect for well pads and ancillary facilities will be determined on a case-by-case basis by the Forest Service in consultation with the North Dakota SHPO. In cases where topographic, erosive, or cultural factors greatly reduce the likelihood of site preservation the Forest Service will consult with the North Dakota SHPO regarding the need for a preproject inventory.

2. The Forest Service will file all inventory reports with the North Dakota SHPO as they are completed, or within 90 days of the completion of fieldwork in the case of negative reports, or within 90 days of avoidance by project redesign. At minimum, inventory reports will contain:

   a. Evidence of a thorough files and literature search for previously identified historic properties.

b. A properly completed State Historical Society of North Dakota cultural site record form for each historic property identified.

c. A large-scale map, based on a USGS 7.5 quadrangle or similarly detailed map, showing the area inventoried and the area of potential environmental impact of the proposed undertaking as agreed upon by the Forest Service and SHPO in accordance with stipulation III.1. above.

d. A properly completed Custer National Forest cultural resources inventory report form #8-2360-1.

e. Explanation of the methods used in the on-the-ground inventory.

3. During dry-ground operating conditions, it has been determined that the following undertakings (so long as there is no associated levelling or road construction, etc.) cause minimal impacts to historic properties on the Grasslands: utility lines chisel plowed into the ground, construction of barbed wire fences, single pole utility lines, replacement and maintenance of existing stock water tanks, non-arrayed geophysical (seismic) testing, prescribed fires, and non-arrayed exploratory coal/uranium drilling. For undertakings of these types, under dry-ground operating conditions, inventory will not be mandatory but will be undertaken when the Forest Archeologist or North Dakota SHPO determines it to be appropriate. The North Dakota SHPO will be consulted regarding the need for inventory when historic properties are known or thought likely by the Forest Archeologist to exist in the immediate vicinity of the undertaking.

IV. EVALUATION OF HISTORIC PROPERTIES

1. The historic properties affected by an undertaking shall be evaluated by the Forest Service in consultation with the North Dakota SHPO for eligibility for inclusion in the National Register.

2. In any case where parties to this PMOA disagree regarding the eligibility of a historic site which may be affected by an undertaking, or when a question exists regarding the eligibility of a historic property, a formal determination of eligibility will be sought from the Keeper of the National Register in accordance with 36 CFR Part 800.4(a)(3).

V. CONSULTATION WITH THE NORTH DAKOTA SHPO

1. The Forest Service will inform the North Dakota SHPO what action is expected regarding each report transmitted to the SHPO's office. Normally the actions requested will be: concurrence in findings that no historic properties are in the affected area, concurrence in a determination of no effect, opinion regarding eligibility of historic properties, concurrence in proposed data recovery programs where prehistoric sites cannot be avoided by project redesign, and review and comment on revised draft reports of data recovery programs.

2. As required, the Forest Service will provide the North Dakota SHPO with all revised draft mitigation reports (i.e., draft reports which have been revised but are not in final form and have not been finally accepted) for review and comment. The Forest Service cover letter will assess the report's adequacy in meeting the data recovery plan and in achieving viable data recovery sufficient to avoid any adverse effects.

3. Should the Forest Service and North Dakota SHPO disagree on the adequacy of reports, data recovery efforts or the reports resulting therefrom, the dispute resolution clause of this PMOA shall be implemented.

VI. ARCHEOLOGICAL REPORT STANDARDS AND GUIDELINES

All archeological reports will conform to the standards and guidelines contained in the most recent revision of the North Dakota State Historical Society's "Guidelines for Cultural Resources Inventory Projects"; (1981); the Department of the Interior's "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" (1983); and the Council's Treatment of Archeological Properties: A Handbook (1980). The Forest Service may establish additional or different local report guidance to assure reporting of particular environmental or management data of concern, in consultation with the North Dakota SHPO.

VII. MANAGEMENT OF PREHISTORIC PROPERTIES

1. The preferred management strategy is avoidance of eligible prehistoric sites. When project redesign is necessary to avoid damaging a prehistoric site, the North Dakota SHPO, in accordance with stipulation IV.1. of this PMOA, will review the measures proposed.

2. Where physical avoidance is not prudent or not feasible, a data recovery program which meets the standards and guidelines in the Council's Treatment of Archeological Properties: A Handbook (1980) and the Department of the Interior's "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" (1983) will be developed and implemented in consultation with the North Dakota SHPO. When the Historic Preservation Plan required by stipulation VIII. of this PMOA is completed, the data recovery program will conform to the research design contained therein. Until the Historic Preservation Plan is completed, drafts and incomplete versions of any research designs under preparation for incorporation into the Plan will be taken into account. Data recovery will proceed when the Forest Service and the North Dakota SHPO:

   a. Agree that the site is eligible for the National Register.

   b. Agree that avoidance is not prudent or not feasible.

   c. Agree on a data recovery plan.

3. The Council will be provided a copy of each data recovery plan developed in accordance with stipulation VII.2. above. The letter transmitting each data recovery plan will inform the Council that it is transmitted in accordance with the terms of this PMOA.

4. The Forest Service will ensure that its data recovery plans are properly implemented by means of field inspections, Special Use Antiquities Permit administration, and enforcement of the standards and guidelines referenced in this PMOA.

5. Should the Forest Service determine that an eligible prehistoric site cannot be avoided by an undertaking but that no data recovery should occur, the Forest Service will consult further with the North Dakota SHPO and the Council in accordance with the regulations, 36 CFR Part 800.

VIII. HISTORIC PRESERVATION PLAN

The Forest Service will develop a Historic Preservation Plan (HPP) for the class of shallow, surface visible, prehistoric sites addressed in this PMOA. The HPP will be based upon the "Prehistory of the Custer National Forest: An Overview" (Beckes and Keyser, 1983), which contains an original synthesis of the archeology of known and likely

Service and North Dakota SHPO have agreed on a suitable program to be followed for that property.

XI. MEETINGS OF THE FOREST SERVICE AND NORTH DAKOTA SHPO

Representatives of the Forest Service and the North Dakota SHPO will meet at least annually to review all undertakings carried out under the scope of this PMOA. This annual meeting will consider whether the PMOA is effective and is providing the Forest Service with an effective management tool for historic properties management. Frequent formal and informal meetings, including on-sites at data recovery projects and potential data recovery projects, to discuss specific projects and issues are encouraged.

XII. AMENDMENT OF THE PMOA

If any of the signatories to this PMOA determine that the terms of the PMOA cannot be met or believes a change is necessary, that signatory shall immediately request the consulting parties to consider an amendment to the PMOA. Such amendment or addendum shall be executed in the same manner as the original PMOA.

XIII. DISPUTE RESOLUTION

If a dispute arises regarding implementation of this PMOA, the Forest Service will seek to resolve the dispute with the objecting party. If any consulting party determines that the dispute cannot be resolved, the Forest Service shall request the further comments of the Council pursuant to 36 CFR 800.6(b).

XIV. TERM OF THIS PMOA

This PMOA shall become effective when ratified by the Chairman of the Council and shall remain in force until the end of the fiscal year during which it was ratified. The Forest Service may renew the PMOA annually by notifying the Council and North Dakota SHPO in writing that it wishes to do so. The PMOA will be cancelled thirty days after written notification that any one of the signatories wishes to cancel it.

Execution and implementation of the terms of this PMOA will evidence that the Forest Service has afforded the Council a reasonable opportunity to comment on its management of eligible, shallow, surface visible prehistoric sites on the Little Missouri Grasslands and effects on these historic properties and that the Forest Service has taken into account the effects of its management on this class of prehistoric archeological properties.

prehistoric properties on the Grasslands. The overview addressed the geography, geology, climate, archeology, and ethnography of the region and represents an original analysis of the available data. An assessment of gaps in knowledge regarding the historic properties of the grasslands, a strategy for completing identification and nomination to the National Register of Historic Places as required by Section 110(a)(2) of the National Historic Preservation Act, procedures for the preservation of properties eligible for inclusion in the National Register and provisions for periodic review and refinement of the HPP in consultation with the North Dakota SHPO shall be included in the HPP. The HPP shall be completed within 18 months of ratification of this PMOA, and it shall be used as the framework within which the Forest Service and North Dakota SHPO decide upon the significance of historic properties, research questions, preservation and other management issues related to historic Properties in the Grasslands.

IX. ANNUAL REPORT ON IMPLEMENTATION OF THE PMOA

At the end of each fiscal year, the Forest Service will provide the Council a brief report on the projects it has undertaken in accordance with the terms of this PMOA. The report need not be long, but it should include such information as: number of inventories conducted, reasons for the inventories, number of acres surveyed, numbers and types of sites identified, any project redesign caused by the presence of eligible historic properties, any data recovery programs implemented and a brief assessment of their results, and any final data recovery reports accepted by the Forest Service during the fiscal year. If available, amount of money spent on historic properties management in the Grasslands and any cost savings resulting from use of the PMOA as opposed to individual review of undertakings in accordance with 36 CFR part 800 should also be cited.

X. UNFORESEEN SITE DISCOVERY

The Forest Service will ensure that all employees, other persons, and contractors developing or modifying public lands are informed of laws and regulations protecting historic properties from vandalism and other forms of destruction, and that they must notify the appropriate Forest Service officer of all previously unknown cultural resources that are inadvertently discovered within a project area.

When historic properties are discovered during project development, the immediate area of the historic property will be protected from further disturbance until the Forest